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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~1018~~ ~~1061~~ 1384

BROOKE MACKALL, JR., APPELLANT,

vs.

ALFRED RICHARDS ET AL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 11, 1881.

SUPREME COURT OF THE UNITED STATES.

No. 1018.

BROOKE MACKALL, JR., APPELLANT,

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1 *Original bill.—Filed May 2, 1871.*

In the supreme court of the District of Columbia. In equity.

ALFRED RICHARDS AND THOMAS A. RICHARDS, T. Wilson, J. D. Parkinson, F. Wheatley, D. Hannan, The Washington Gas-Light Company, H. P. Pepper, and P. O'Hare, complainants,
and
BROOKE MACKALL, B. MACKALL, Jr., W. W. Corcoran, J. M. H. Hollingswith, V. Hollingswith, J. A. Nichols, M. Reintzel, R. Hannawinkle, W. Hannawinkle, E. deVoss, J. deVoss, M. Bolling, G. Bolling, M. Doughty, F. A. Doughty, J. Albert, J. Albert, and S. Doughty, defendants.
} Docket. No. 11.

To the honorable the judges of the supreme court of the District of Columbia, holding a special term of said court:

The complainants respectfully represent:

1st. That the complainants, A. Richards and T. A. Richards
2 are citizens of the District of Columbia, and residents of the city of Washington, and are doing business in said city under the name and firm of A. & T. A. Richards. T. Wilson is also a citizen of said District, and a resident of said city, and was one of the firm of Corwin, Owen and Wilson, now dissolved; that the other complainants are also citizens of said District, and that all of the said complainants are the holders of judgments against the said defendant B. Mackall, jr., and bring this suit in their own behalf, and for the benefit of all other creditors of the said Brooke Mackall, jr., who will become parties to and share the costs and expenses attending these proceedings.

2nd. That the defendants, Brooke Mackall and Brooke Mackall, jr., W. W. Corcoran, J. M. H. Hollingswith, V. Hollingswith, J. A. Nichols, M. Reintzel, M. Doughty, F. A. Doughty, and S. Doughty, are citizens of the District of Columbia aforesaid, and reside therein; that R. Hannewinkle and W. Hannewinkle reside in Richmond, in the State of Virginia; G. Bolling and M. Bolling reside in Pitts-
3 burg, in the said State of Virginia; James Albert and Julia Albert reside in Baltimore, in the State of Maryland; and that J. deVoss and E. deVoss reside in Berlin, in Prussia.

3d. That on or about the first of October, 1867, the complainants, A. & T. A. Richards, by their firm-name of A. and T. A. Richards, on the law side of this honorable court recovered judgements against the defendants B. Mackall, junior, as maker, and B. Mackall as endorser, of a certain promissory note for the sum of $897.42, with interest and costs, with a condition attached to such judgements that there should be a stay of execution on such judgements until the first of March, 1868; that afterwards, and after the period of the said stay of execution had elapsed, said complainants proceeded to enforce their said judgements by having recourse to certain real estate belonging to the said Brooke Mackall, junior, situated in the said city of Washington, and that accordingly, under and by virtue of certain writs of execution
4 issued upon such judgements, and certain other judgements prior in date to those recovered by your complainants as aforesaid,

the marshal of the District of Columbia, took and sold a certain parcel of real estate, lying and being in the said city, and contained within the cau'ses and distances following, that is to say, part of lot numbered seven (7) in square numbered two hundred and twenty-three (223), beginning at the northeast corner of said square and running thence south forty-four (44) feet; thence westerly to the west end of the lot; thence in a northerly direction with the west line thereof to the north line of said lot; then with said north line to the place of beginning, to Alfred Richards, for the sum of two thousand five hundred dollars, and conveyed the same to said Richards by deed, bearing date the 7th of October, 1879, now recorded among the land-records of Washington County, in the District of Columbia, in liber No. 639, one of said records, as will more particularly appear upon inspection of said record; that after payment of the said sum so realized from the sale
5 of the said piece of property, the judgements so as aforesaid, prior in date to the said judgements of the complainants, A. and T. A. Richards, there remained in the hands of the marshal aforesaid the sum of $646.89, applicable to the judgements so as aforesaid recovered by the said complainants, A. and T. A. Richards, as will more fully and at large appear from a copy of the account or statement made by the said marshal of the said sale and the said judgements filed herewith and marked "Exhibit A"; that after the application of the sum so remaining in the hands of the marshal to the said judgements of the complainants, A. and T. A. Richards, there remained a large balance due and payable on the said judgements, as will appear from a short copy of said judgements hereto annexed and marked "Exhibit B," and that the said balance still remains unpaid.

4th. That on or about the 6th of June, 1865, the complainant, F. Wheatley, recovered on the law side of this court a judgement
6 against the said Brooke Mackall, junior, for the sum of $1,483.13, with interest and costs; that said judgement was forwarded upon proceedings instituted under the act of Congress making provision for the enforcement of mechanics' liens and liens of material-men, and is prior in date to the said judgements so as aforesaid recovered by the said A. & T. A. Richards; that no portion of the fund arising from the sale of the said part of lot 7, in square 223, as aforesaid, made under the execution issued to sales for the judgements recovered by the said A. and T. A. Richards was applied to the judgements of the said complainant, F. Wheatley, because, as complainants are advised, the said Wheatley had not, at the date of the said sale of said part of lot, ordered an execution to issue for the enforcement of said judgement, or because such execution had not come into the hands of the said marshal of the said District at the time of such sale; but complain-
7 ants are advised that the judgements of the said complainant, F. Wheatley, operates as a lien upon the said part of lot 7, in square 223, from its date; that a writ of fieri facias to enforce said judgement has been issued, and is still outstanding unsatisfied, and that no part of the said judgement has been paid.

5. That on or about the 3rd day of April, 1868, W. H. Owen and T. Wilson, doing business under the name and firm of Corwin, Owen and Wilson, recovered on the law side of this court, against the said Brooke Mackall, junior, a judgement for the sum of $300, with interest and costs, which said judgement was afterwards assigned to, and entered to the use of, the complainant, T. Wilson; that a writ of fieri facias was issued upon the said judgement and placed in the hands of the marshal of the District of Columbia, who made a return of nulla bona

thereon, and that said judgement remains still unsatisfied, no part thereof having been paid; all of which will more fully and at large appear from a short copy of said judgement hereunto annexed and
8 marked Exhibit C; that on or about the 19th of November, 1868, the complainant J. D. Parkinson recovered on the law side of this court a judgement against said Brooke Mackall, junior, for the sum of $137.75, with interest and costs, and caused a writ of fieri facias to be issued thereon, but no part of said judgement has been paid; that on or about the 15th day of November, 1869, the complainant D. Hannan recovered on the law side of this court a judgement against said defendant Brooke Mackall, junior, for $253.90, with interest and costs, and has caused a writ of fieri facias to be issued thereon, to which the marshal of the District of Columbia has made return of nulla bona, but no part of said judgement has been paid; that on or about the 5th day of January, 1870, the complainant H. P. Pepper recovered on the law side of the court a judgement against the defendant B. Mackall, junior, for the sum of $300, with interest and costs, and caused a writ of fieri facias to be issued thereon, but that no part of said jud'e-
9 ment has been paid; that on or about the 28th day of February, 1870, the complainant, the Washington Gas-Light Company, recovered a judgement against the said Brooke Mackall, jr., on the law side of the court, for $115.50 with interest and costs, and caused a writ of fieri facias to be issued thereon, to which the marshal of the said District has made return of nulla bona, and that no part of the said judgement has been paid; that on or about the 22nd day of February, 1871, the complainant P. O'Hare recovered on the law side of this court, a judgement against said defendant, Brooke Mackall, jr., for the sum of $289.69, with interest and costs, no part of which said judgement has been paid; all of which will more fully and at large appear upon the reference to the record of the said several judgements in this court on the law side thereof.

6. That the said Brooke Mackall, jr., is the owner of certain very valuable real estate in the city of Washington; that is to say, of all that part or portion of the parcel of ground known and designated upon the ground plat or plan of the said city of Washington as
10 lot numbered seven (7) in square numbered two hundred and twenty-three (223), remain'g after taking or carving out therefrom the aforesaid piece or part thereof so as aforesaid taken, sold, and conveyed by the marshal *to* the District of Columbia to Alfred Richards to s'tisfy the judgement of complainants A. & T. A. Richards, as far as the same would go after satisfying certain other judgements prior in date to the said judgements as is hereinbefore set forth, contained (complainants annex to and make a part of this bill of complaint a plat of said lot shewing the portion thereof sold as aforesaid and the portion remaining unsold); that the said parcel of ground and premises *ought* to be made responsible for, and subjected to, the judgements of complainants hereinbefore particularly mentioned, but that, as complainants are advised, the said several judgements do not operate as liens upon the said parcel of ground, because, as far as can be ascertained from the land-records of the county of Washington, in the District of Columbia, where such title should appear, the legal title to the
11 said parcel of ground is not vested in the said B. Mackall, jr., and that said parcel of ground cannot therefore, under the operation of the law controling and governing such matters.

7. That complainants are informed and believe, and upon such information and belief aver and charge, that the said B. Mackall, jr., is the

owner of the aforesaid parcel of ground and premises, and that he kept his title thereto off of the land records of Washington County, in the District of Columbia, for the purpose of defrauding complainants and hindering and delaying them in the recovery of their aforesaid judgements; that in certain proceedings instituted in this court, on or about the 29th of June, 1869, by the said B. Mackall, jr., against W. B. Todd and the mayor, &c., of Washington City, the said B. Mackall, jr., avers that he is the proprietor, and supports such averments by an oath, as will appear from the proceedings in cause No. 1703, equity docket 9, in this court; that in certain other proceedings instituted 12 in this court, on or about the 15th day of September, 1869, by the said B. Mackall, jr., against certain of complainants, among others, praying the court to restrain and enjoin the marshal of the District of Columbia from making sale of the part of said lot seven, in square two hundred and twenty-three, so as aforesaid sold to said Alfred Richards to satisfy the said judgements, the said B. Mackall, jr., alleges and supports the said allegation with an oath, that he is equitably entitled to the whole of said lot seven, in square two hundred and twenty-three, having received a parol gift thereof, but that the said property has never been conveyed to him, and that he has no legal title to any part thereof, as will appear from the proceedings in said cause in this court; that in point of fact complainants are informed and believe, and so believing, aver and charge, that the said lot numbered seven, in square two hundred and twenty-three, was sold many years ago by W. W. Corcoran and W. S. Nickols, in whom the title was vested, to the said B. Mackall, who paid the full purchase 13 money therefor, and received a conveyance thereof in due form, and that afterwards the said B. Mackall sold, or gave and conveyed the said lot seven, to B. Mackall, jr.; that the said B. Mackall never placed the conveyance so as aforesaid made to him upon the land-records of Washington County, in the District of Columbia, and that the said B. Mackall, jr., has never placed the conveyance to him, or any other evidence that the title of said lot has been transferred to him, upon the said land-records, and that the said B. Mackall, and B. Mackall, jr., conferring and contriving to hinder, delay, and defraud complainants have kept and still do keep, the title to the said lot 7 in square two hundred and twenty-three, purposely concealed, and have hitherto kept, and still do keep, the said conveyances off the said land-records, where the same ought to be spread, for the purpose of hindering and delaying said complainants in the recovery of their said judgements.

8. That since the sale and conveyance of the *of the* said lot seven, 14 in square two hundred and twenty-three, to the said B. Mackall by W. W. Corcoran and W. S. Nichols, in manner aforesaid, the said W. S. Nichols has departed this life, and that the record-title to said lot is now vested and standing in the said W. W. Corcoran and the heirs at law of the said W. S. Nichols, who are as follows: J. M. H. Hollingswith and V. Hollingswith, J. A. Nichols, M. Reintzel, R. Hanewinkle, W. Hanewinkle, E. de Voss, J. de Voss, M. Bolling, G. Bolling, M. Doughty, F. A. Doughty, J. Albert, J. Albert, and S. Doughty, who are defendants to this bill.

9. That in the year 1862, the said lot seven, in square two hundred and twenty-three, was sold for taxes, assessed thereon by the corporation of the said city of Washington, and was at such sale purchased by one A. Hyde, who afterwards transferred this said purchase to the defendant B. Mackall, jr., to whom the said lot was conveyed in due form by the said corporate authorities of the said

city of Washington, by deed bearing date the 6th of October, 1865; that the said B. Mackall, jr., has never placed this
15 last-mentioned deed upon the land records of Washington, in the District of Columbia, but has kept the same off of said records for the purpose further of concealing his title to said lot, and so delaying, hindering, and defrauding said complainants; that there has accumulated, and is now due and unpaid, a very large amount of taxes assessed upon the said lot seven, in square two hundred and twenty-three, for which the corporate authorities have advertised and are about to sell the said lot, as under the provisions of law in such case made and provided they have a right to do; that notwithstanding all these several claims and incumbrances, complainants are advised that the said lot ground is of ample value to pay off and satisfy the several judgements so as aforesaid held by them, and that in good conscience they are entitled to have the decree of this court ordering that said lot shall be sold under the directions and by an officer of the court, and the pro-
16 ceeds applied, first, to the payment of said incumbrances, and next to the payment of said judgements held by complainants. Forasmuch, then, as complainants are without remedy in the premises, according to the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable: to the end, therefore, that the said B. Mackall and B. Mackall, jr., and the rest of the defendants may full, true, direct, and perfect answers make to all and singular the matters and things hereinbefore stated and charged, as fully and particularly as if the same were hereinbefore repeated and they thereunto distinctly interrogated, and particularly said defendants B. Mackall and B. Mackall, jr., may discover them and make known to the court the condition of the title to the said lot seven, in square two hundred and twenty-three, in the said city of Washington, and may produce and bring into court here all deeds and other evedences of the title to such lot, to be inspected
17 by and disposed of by the court—

The complainants pray as follows:

1. For writs of subpœna against such of said defendants as reside within the jurisdiction of the court.

2. For an order of publication against such of said defendants as reside without the jurisdiction of the court.

3. That a decree may pass commanding and directing the said defendants, B. Mackall and B. Mackall, jr., to make known and discover to the court the condition of the title to the said lot seven, in square two hundred and twenty-three, in the city of Washington, and to produce and file here in court all conveyances, deeds, or other evidences of the title to the said property as may be in their possession or within their reach.

4. That a decree may be passed for the sale of the said lot seven, in square two hundred and twenty-three, under the directions of the court and by an officer appointed thereby, and the proceeds of such sale applied to the payment, first, of the incumbrances existing and being
18 on the said lot, and next, so far as the same will go, to the payment of the several judgements of the complainants, with the interest and costs accrued thereon, as hereinbefore specified, the amount of such incumbrances and judgements to be ascertained by the auditor of the court.

5. That the complainants may have such other and further relief in the premises as the nature of the case may require.

W. B. WEBB,
Counsel for Complainants.

Answer of B. Mackall, jr., to O. bill.—Filed July 6th, 1871.

In the supreme court of the District of Columbia, this 3rd day of July, 1871.

ALFRED RICHARDS ET AL. *vs.* BROOKE MACKALL, JR., ET AL. } Equity. No. 2373. Doc. 11.

To the honorable judges of the supreme court of the District of Columbia holding a special term of said court:

19 The separate answer of Brooke Mackall, jr., to the bill of complaint of complainants.

For answer to said bill, I say as follows:

1st. I admit the plaintiffs and defendants reside as stated in said bill of complaint.

2nd. I admit the plaintiffs, Alfred & Thomas A. Richards, recovered judgement against this defendant and defendant Brooke Mackall, as stated in the 3d paragraph of said bill; and also of the real estate described in said bill under a writ of fieri facias issued upon said judgement, the name of the purchaser, time of sale, amount of the sale, and distribu tion of the fund arising therefrom.

3rd. I admit the recovery of a judgement by Francis Wheatley, as stated in said bill, but deny it is a lien upon said property, for reasons hereinafter stated.

4th. I admit the recovery of a judgement by W. H. Owen & T. Wilson, as stated in the 5th paragraph of said bill; also a judgement
20 by J. D. Parkinson and one by D. Hannan and one by H. P. Pepper and one by the Washington Gas-Light Company and one by P. O'Hare, and no payments made thereon, as stated in said bill.

5th. This defendant denies that he is the owner of *the owner of* that piece of real estate known as lot numbered seven (7) in square numbered two hundred and twenty-three, or any part thereof, and was not the owner thereof, or any part thereof, at the time, nor at any time since said judgements were rendered against him.

I never had any deed of conveyance nor any agreement in writing for a conveyance of said real estate, excepting a deed of date, I believe, the 6th of October, 1865, from the late corporation of Washington, under a tax-sale of said lot; said deed I have lost. I never put it upon record, but was advised by counsel somewhat learned in the law, and verily believe said tax-sale was erroneous and the deed predicated thereon void.

I believe and aver that defendant Brooke Mackall has the equi-
21 table, if not the legal title to said property. I did not neglect to put said tax-deed upon record for the purpose of concealing the ownership of said lot, nor for the purpose of hindering, delaying, or defrauding anybody. I admit there is a large amount of arrears of taxes against said lot. I have no deed or other evidence of title to said lot, or any part thereof, in mypossession or under my control.

And now, having fully answered, I pray to be hence dismissed, &c.

B. MACKALL, JR.

L. G. HINE,
Sol'r for Def't B. Mackall, jr.

I, Brooke Mackall, jr., on oath say that I have read the foregoing answer, by me subscribed, and know the contents thereof, and that the facts therein stated as of my own knowledge are true, and as to those things stated on information and belief, I believe to be true.

B. MACKALL, JR.

Sworn to and subscribed before me this 3rd day of July, 1871.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Ass't Clerk.

22 *Answer of B. Mackall, sr., to O. bill.—Filed July 12th*, 1871.

In the supreme court of the District of Columbia, this 12th day of July, 1871.

ALFRED RICHARDS ET AL. *vs.* BROOKE MACKALL ET AL. } Equity. No. 2373.

The separate answer of Brooke Mackall to the bill of complaint of complainant.

For answer to said bill, or to so much as he is advised it is material for him to answer unto, this defendant answering, says:

1st. He admits the residence of parties, plaintiffs & defendants, as stated in the bill, and that said complainants, Alfred and Thomas A. Richards, on or about the 1st of October, 1867, recovered judgement against him and Brooke Mackall, jr., for $897.42, &c.

2nd. For further answer this defendant says that on or about the 19th day of November, A. D. 1851, he purchased of W. W. Corcoran an undivided half part of said lot number 7, in square No.
23 223, and paid therefor; that a deed was tendered him, which he refused to accept; the balance of said lot he purchased from W. S. Nicholls, as trustee, who died soon thereafter, and defendant never received a deed of conveyance therefor, and has no paper title thereto, and has no evidence of his title to said lot in his possession or control; that he purchased said lot, and promised to give it to his son Brooke Mackall, jr., at some future time, but has not since been in a financial condition to carry out such intention, and has never given him any conveyance of the said lot, nor any paper writing relating to said lot.

Said lot was purchased from W. W. Corcoran and Wm. S. Nichols, trustees.

And now, having fully answered, &c.

B. MACKALL.

I, Brooke Mackall, on oath say that I have read the foregoing answer, by me subscribed, and know the contents thereof, and that the
24 facts therein stated as of my own knowledge are true, and that as to those facts therein stated on information and belief, I believe them to be true.

B. MACKALL.

Sworn to and subscribed before me this 12th day of July, 1871.

R. J. MEIGS, *Clk*,
By L. P. WILLIAMS,
Ass't Clerk.

Replication.—Filed Jan'y 30th, 1872.

In the supreme court of the District of Columbia.

RICHARDS *vs.* MACKALL. } No. 2373. Equity doc. 11.

The plaintiff hereby joins issue with the defendant, and will hear the cause on bill, answer, and depositions against the defendant.

W. B. WEBB,
Solicitor for Complainant.

Petition for leave to amend bill.—Filed Feb'y 17, 1873.

In the supreme court of the District of Columbia.

ALFRED RICHARDS AND OTHERS *vs.* BROOKE MACKALL AND OTHERS. } No. 2373. Equity doc. 11.

25 The plaintiff prays the court for leave so to amend the bill heretofore filed by him in this cause, that he may have such decree passed therein, as will authorize a conveyance to him of all the title outstanding in the defendants, in the part of lot 7, in square 223, sold by the marshal under execution, and purchased by the plaintiff Alfred Richards, as appears fully in the said bill. And so, as in duty bound, the—

W. B. WEBB,
Sol'r for Pl'ffs.

Amended bill.—Filed March 6th, 1873.

In the supreme court, District of Columbia.

ALFRED RICHARDS & OTHERS *vs.* BROOKE MACKALL & OTHERS. } In equity. No. 2373. Doc. 11.

The amended and supplemented bill of Alfred Richards, Thomas A. Richards & others, by leave of the court first had and obtained,
26 in the above-cause exhibited, respectfully represents to the court:

That from the allegations made in the said original bill, it appears that under and by virtue of certain writs of execution issued upon certain judgements against the defendant Brooke Mackall, jr., in due form of law, the marshal of the District of Columbia took and sold to the complainant, Alfred Richards, part of lot numbered seven (7), in square numbered two hundred and twenty-three (223), in the city of Washington, in the District of Columbia, in the said part of lot, being particularly set out and described by metes and bounds in the said bill, and that the sum realized from said sale, being insufficient to satisfy the judgement, the said original bill was filed to subject another portion of the said lot, particularly mentioned and sold as aforesaid, to the operation of the said judgement, and praying that a trustee might be appointed to sell the same. That the assistance of the court was invoked because, as it is alleged, the said
27 Brooke Mackall, jr., though abundantly shown to be the owner

of said lot 7, in square 223, has ever studiously kept the deed of the said property by which the same is conveyed to him off the land records of the District of Columbia, so that as far as the said records are concerned it does not appear that the legal title to the said parts of lot are in the said Brooke Mackall, but that in reality the same is now vested and outstanding in W. W. Corcoran, and the heirs-at-law of W. S. Nichols, deceased, who are made parties defendant to the said original bill. That the complainant, the said Alfred Richards, in amendment of said bill and by way of supplement thereto, respectfully shows that under and by *way of supplement thereto, respectfully shows that under and by* virtue of the aforesaid sale made to him by the marshal of the District of Columbia of the said part of lot seven (7) in square two hundred and twenty-three (223), particularly described in the original bill filed in the cause, he has acquired only the equitable
28 title of the said Brooke Mackall, jr., thereto, the legal title being also outstanding in the manner as aforesaid in the said W. W. Corcoran and the heirs-at-law of W. S. Nichols, deceased; that the complainant answers and charges that the said W. W. Corcoran, and the said W. S. Nichols, during his lifetime, sold the said property to the defendant Brooke Mackall, who afterwards transferred the same to Brooke Mackall, jr., as is alleged in the said original bill; that the said W. W. Corcoran and the heirs-at-law of said W. S. Nichols, in point of fact have no title to the said lot seven (7) in square two hundred and twenty-three (223), except a bare legal title, there being no record of any conveyance from them to the said Brooke Mackall, or Brooke Mackall, jr., the same being studiously kept from the land records of the District of Columbia by the said Mackall, for the purpose of fraud and concealment; that the outstanding naked legal title operates to injure the value of the title acquired
29 by complainant under the sale so as aforesaid made to him by the marshal of the District of Columbia, and he prays the court that in addition to the relief prayed in the said original bill he may have a decree ordering any trustee be appointed under the prayer of said bill to make conveyance to complainant Alfred Richards and his heirs and assigns of the said part of lot seven (7), in square two hundred and twenty-three, (223,) so as aforesaid by the marshal of the District of Columbia conveyed to said complainant, as fully and particularly set forth in said original bill.

ALFRED RICHARDS.

W. B. WEBB,
Sol'r for Comp'ts.

Decree in special term, May 1, 1873.

In the supreme court of the District of Columbia, the 1st day of May, 1873.

ALFRED RICHARDS ET AL. *vs.* BROOKE MACKALL ET AL. } In equity. No. 2373. Doc. 11.

30 This cause coming on to be heard upon bill, answer, and the depositions taken and filed therein, and being duly considered, it is by the court this first day of May, 1873, upon motion of the plaintiff's solicitor, ordered, adjudged, and decreed that the title to the said real estate in the proceedings in the said cause particularly mentioned, that is to say,

to all of lot numbered seven in square numbered two hundred and twenty-three, in the city of Washington to the complainant Alfred Richards, is vested in the defendant Brooke Mackall, jr., and that the same be sold for the purpose of paying the judgements and the other incumbrances particularly set out in said proceedings, or that may be in any other way existing thereon, and that W. B. Webb and Thomas Wilson be, and they are hereby appointed trustees to make sale thereof, and that the manner of proceeding in making said sale shall be as follows: First. They shall file with the clerk of the court
31 a bond to the United States, in the sum of twenty thousand dollars, with sureties, to be approved by the court or a judge thereof, conditioned for the faithful discharge of the duties imposed upon them by this decree, or that may be imposed upon them by any further order of the court passed in the cause; second, they shall sell the said real estate at public auction to the highest bidder, first giving notice of the time and terms of said sale, which shall be upon the premises, by advertisement in some newspaper in the city of Washington, the first insertion of said advertisement to be at least four weeks before the day of sale, the terms of said sale to be as follows: one-third of the purchase-money to be paid in cash, and the balance in equal payments in nine, twelve, eighteen, and twenty-four months, the purchaser or purchasers to give for the deferred payments his or their promissory notes, secured to the satisfaction of said trustees; third, that they shall report the
32 said sale to the court, with an affidavit as to its fairness and good faith, and upon the full ratification thereof shall convey the said property to the purchaser or purchasers, and shall thereby vest in said purchaser or purchasers the title thereto of any description, and however subsisting in any way, in each and every of the said parties to these proceedings; and that this decree shall of itself operate to divest and take out of the said Brooke Mackall all title of whatever kind in the said property he may have, and vest the same in the trustees for the purposes hereinbefore set forth and contained.

By the court:

A. WYLIE.

Decree in general term, Oct. 16, 1873.

In the supreme court of the District of Columbia, the 16th day of October, 1873.

ALFRED RICHARDS ET AL. *vs.* BROOKE MACKALL ET AL. } No. 2373. Equity doc. 11.

33 This cause coming on to be heard in this court in general term, on appeal from the decree passed in said cause at the special term of said court, held in the month of March, 1873, and having been fully heard and considered, it is, by the said supreme court of the District of Columbia, sitting in general term as aforesaid, ordered, adjudged, and decreed that the said decree, made at said special term, be, and the same is hereby, affirmed; from which decree the said defendants pray and appeal to the Supreme Court of the United States.

By order of the court.

Mandate Supreme Court of the United States.—Filed March 28th, 1877.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the honorable the judges of the supreme court of the District of Columbia, greeting:

Whereas lately, in the supreme court of the District of Columbia, before you, or some of you, in a cause between Alfred Richards and Thomas A. Richards, T. Wilson, J. D. Parkinson, F. Wheatley, D. Hannan, The Washington Gas-Light Company, H. P. Pepper, and P. O'Hare, complainants, and Brooke Mackall, B. Mackall, jr., W. W. Corcoran, J. M. H. Hollingswith, V. Hollingswith, J. A. Nichols, M. Reintzel, R. Hennewinkle, W. Hannawinkle, E. de Voss, J. de Voss, M. Bolling, G. Bolling, N. Doughty, F. A. Doughty, J. Albert, J. Albert, and S. Doughty, defendants, wherein the decree of the said supreme court, entered in said cause on the 16th day of October, A. D. 1873, is in the following words, viz:

(SEAL OF THE SUPREME COURT OF THE U. S.)

"This cause, coming on to be heard in this court in general term, on appeal from the decree passed in said cause at the special term of said court held in the month of March, 1873, and having been fully heard and considered, it is, by the said supreme court of the District of Columbia, sitting in general term as aforesaid, ordered, adjudged, &
35 decreed that the said decree, made at said special term be, and the same is hereby, affirmed;" as by the inspection of the transcript of the record of the said supreme court, which was brought into the Supreme Court of the United States by virtue of an appeal taken by Brooke Mackall, sr., and Brooke Mackall, jr., agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas in the present term of October, in the year of our Lord one thousand eight hundred and seventy-six, the said cause came on to be heard before the said supreme court, on the said transcript of record, and was argued by counsel: On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said supreme court in this cause be, and the same is hereby, affirmed, with costs, and that the said complainants, Alfred Richards et al., recover against the said defendants, Brooke Mackall and Brooke Mackall,
36 jr., one hundred and five dollars and thirty-five cents, for their costs herein expended, and have execution therefor.

19th March, 1877.

You, therefore, are hereby commanded that such execution and proceedings be had in said cause as, according to right and justice and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the honorable Morrison R. Waite, Chief Justice of said Supreme Court, the twenty-seventh day of March, in the year of our Lord one thousand eight hundred and seventy-seven.

Costs of complainants: Clerk, $85.35; attorney, 20.00—$105.35.

Taxed by—

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

37 *Trustee's report of sale.—Filed June 12th, 1877.*

In the supreme court of the District of Columbia the day of June, 1877.

ALFRED RICHARDS ET AL. *vs.* BROOKE MACKALL ET AL. } No. 2373. Equity.

To the honorable the supreme court of the District of Columbia, holding a special term for equity business:

The report of William B. Webb and Thomas Wilson, trustees under the decree passed in the above-entitled cause, respectfully represents: That after giving bond for the faithful discharge of their trust, as required by the decree made in this cause, and after giving the notice of the time, place, and terms of said sale required by said decree, that is, by inserting in the "Evening Star" the advertisement, a copy of which is hereto annexed and made part of this report, the first insertion thereof being the day of , 1877, and the same being continued every other day until the day of sale, they did attend upon
38 the premises at the time and place fixed in the said notice, and a large company being in attendance, they did proceed to sell, at public auction, and did sell then and there the real estate in the proceedings in the said cause particularly mentioned; that is to say, all of lot numbered seven (7), in square numbered two hundred and twenty-three (223), in the city of Washington, in the District of Columbia, not heretofore sold by the marshal of the District of Columbia to the complainant, Alfred Richards, to Samuel Shellabarger, he being the highest bidder therefor, at and for the price and sum of twelve thousand and one hundred and fifty dollars ($12,150); that the said purchaser has complied with the terms of said sale, as the same are prescribed by the said decree, by paying one-third of the purchase-money, to wit, four thousand and fifty dollars ($4,050.00) in cash, and by giving for the balance thereof his four promissory notes, all bearing date on the
39 day of said sale, each for the sum of two thousand and twenty-five dollars and sixty-six and two-thirds cents ($2,025.66⅔), and payable, respectively, in nine, twelve, eighteen, and twenty-four months after said date, with interest, secured to the satisfaction of said trustees, and that they bring the said cash and said notes here into the court to await the further order of the court in the premises.

W. B. WEBB,
THOMAS WILSON,
Trustees.

DISTRICT OF COLUMBIA, *to wit:*

On this 12th day of June, before the subscriber, personally appeared William B. Webb and Thomas Wilson, trustees, and made oath that the matters and things stated in the foregoing report are true, to the best of their knowledge and belief, and that the sale thereon reported was made fairly and in good faith.

R. J. MEIGS, *Clerk.*
By R. J. MEIGS, JR., *Asst.*

40 *Provisional order of ratification of trustees' sale, June 14th, 1877.*

ALFRED RICHARDS ET AL.
vs.
BROOKE MACKALL ET AL. } No. 2373. Equity doc. 11.

William B. Webb and Thomas Wilson, the trustees appointed by the decree made in this cause, having reported to the court that they have sold the property in the proceedings in said cause mentioned, that is to say, "all of lot numbered seven (7), in square numbered two hundred and twenty-three (223), in the city of Washington, not heretofore sold by the marshal of the District of Columbia, to the complainant, Alfred Richards," to Samuel Shellabarger, for the sum of twelve thousand one hundred and fifty dollars ($12,150), and that the said purchaser has complied with the terms of said sale, as prescribed by the said decree, it is, this 14th day of June, 1877, ordered that the said sale be, and the same is hereby, ratified and confirmed, unless cause to the
41 contrary thereof shall be shown on or before the 10th day of July, 1877; provided a copy of this order be published in the Washington Law Reporter once a week for three successive weeks before the said 10th day of July, 1877.

By the court:

A. W.

Exceptions to sale made by the trustees W. B. Webb & T. Wilson.—Filed July 9th, 1877.

"That said trustees announced at the sale that they were wholly unable to advise bidders what property or what area of ground they were entitled to sell under the decree in said cause, or under the order of sale issued in said cause.

"That said property was not sold by the square foot, as such property is usually sold, but was sold for a gross sum, without any information being given to the purchasers as to the number of square feet contained in the property offered for sale, or any such information being accessible by them."

42 *The affidavit of trustees as to sale to Samuel Shellabarger.—Filed July 23rd, 1877.*

In the supreme court of the District of Columbia, the 17th day of July, 1877.

RICHARDS ET AL.
vs.
MACKALL ET AL. } Equity. No. 2373.

William B. Webb and Thomas Wilson, being duly sworn depose and say that they were appointed trustees under a decree made in the above cause, on the first day of May, 1873, at special term, affirmed in general term the 16th of October, 1873, and an appeal affirmed by the Supreme Court of the United States at its last term, to sell all of lot seven, in square two hundred and twenty-three, in the city of Washington, except such portion of said lot as had been theretofore sold by the marshal of the District of Columbia to Alfred Richards, and that the method of their proceeding in making said sale was particularly set

forth in said decree; that they complied with the said decree
43 in every particular, gave the advertisement, just as the decree required, and sold the part of lot just as the same was described in the decree mentioned above; that there was a large attendance at the sale, and that before the sale was commenced Mr. Thomas Wilson, one of the said trustees and affiants, read to the company assembled, an accompanying paper, together with the advertisement of sale, the decree made by the court, the deed from the marshal to Richards of the portion of the lot theretofore sold by the marshal, and called attention of all parties present to the exact and distinct term and conditions upon which the property was offered for sale; that they also exhibited the annexed diagram showing as nearly as they could what portion of said lot had been sold by the marshal, and what part remained unsold; that they did all this for the purpose of making clear and distinct to bidders exactly what, as nearly as they could, *what* was being
44 sold by them under the decree; that they could only sell under the decree, and had they attempted to make sale in any other way such sale would have been unlawful, and they consider the price bid, $12,100, to have been fair, and that if sold or offered for sale a second time they do not believe it (the property) would sell for a greater or higher price.

THOMAS WILSON,
W. B. WEBB,
Trustees.

Sworn before me, by W. B. Webb, July 23, 1877.
R. J. MEIGS, *Clerk.*

45 The trustees, W. B. Webb and Thomas Wilson, read the following paper at the sale made by said trustees on the 24th day of May, 1877, and filed the same with their affidavit as to said sale.

The notice of the present proposed sale has been published in the Evening Star from the 20th day of April, twice a week, and day of sale. It is as follows:

(Read notice.)

The sale is made by the trustees under the following decree of the equity court, affirmed by the court in general term and the Supreme Court of the United States.

(Read decree.)

It is only that portion "not heretofore sold by the mashal of D. C. to Alfred Richards which is to be sold at the present sale. Alfred Richards and other persons furnished material and labor for and on the house or building situate on the corner of the lot—N. Y. ave. and 14th st.—known now as the "Palace Market." Mechanics' liens were filed by these persons, judgement and decree rendered and sale made,
46 at which Alfred Richards became the purchaser. His deed from the marshal contains the following description:

(Read from page 2, record.)

All the ground contained within this description having been sold and purchased by Mr. Richards will not be sold nor attempted to be sold by the present sale. But the precise lines or boundaries of or the exact number of feet in the piece to be sold the trustees do not undertake; whether the south line of Richards' purchase runs southwesterly from the front or southeast corner of the building along the line of fence which you see, paral'el to and 44 feet from New York avenue; or

whether it runs due west along the south side of the building to its rear end and from thence westerly to the rear end of the lot, is a legal question which the trustees do not undertake to determine. If Richards' line goes westerly by the wall of his house, then the present purchaser gets a greater number of feet in his lot. But if Richards' line goes "westerly" by the fence continued to the rear of the lot, then the
47 present purchaser gets fewer number of feet.

This leaves the number of square feet in the lot we now sell undetermined, and therefore we will not sell by the foot but in bulk. The lot which we sell is 107.2 feet front on 14th st., 100 feet deep on one end and 152.9 narrowing off towards the rear in uncertain or indefinite manner we have described. If it extends up to the wall of the house it will contain about 11,000 or 12,000 feet, but if it goes only to the fence it will contain only 8,500 feet.

Decree, July 24th, 1877.—Exceptions to report of sale by trustees sustained.

In the supreme court of the District of Columbia.

ALFRED RICHARDS ET AL.
vs.
BROOKE MACKALL ET AL. } In equity. No. 2373.

48 This cause came, on this 24th day of July, 1877, to be heard upon exceptions filed by Brooke Mackall, jr., to the sale and report thereof by the trustees appointed to sell the property in controversy and to the confirmation thereof, and having been argued by counsel it is ordered, adjudged, and decreed that the said exceptions be, and the same are hereby, sustained, and that before sale can be made of said property the amount to be sold must be definitely ascertained by some proper legal proceedure.

By the court:

A. W.

Affidavit of Brooke Mackall, jr., as to ejectment suit.—Filed June 8th, 1878.

Supreme court of the District of Columbia.

ALFRED RICHARDS ET AL.
vs.
BROOKE MACKALL ET AL. } In equity. No. 2373.

DISTRICT OF COLUMBIA,
County of Washington, ss:

49 On this 8th day of June, 1878, came before me Brooke Mackall, jr., one of the parties defendants in the above-entitled cause, and made oath that a suit has been commenced in ejectment on the law side of this court by Leonard Mackall, trustee of Brooke Mackall, against said Alfred Richards, who claims to have been the purchaser at the alleged sale by the marshal of a part of lot No. 7, referred to in the decree of the court in this cause, to recover possession of said lot, and said suit is now pending and undetermined, but he is advised and believes that a decision in said suit will determine whether the title to any part of said lot, passed by said alleged or pretended sale of said

marshal to the said Richards; and if so, what part thereof by which any uncertainty now appearing in said decree will be fully and clearly explained.

B. MACKALL, JR.

Subscribed and sworn to before me this 8th day of June, A. D. 1878.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Ass't Clerk.

50 *Reference to Special Auditor J. J. Johnson, to report proper metes and bounds of that portion of lot 7, square 223, which was sold to Alfred Richards by the marshal of the District of Columbia, and also that other portion of said lot not so sold, and which is directed by the decree in this case to be sold by the present trustees.*

In the supreme court of the District of Columbia, special term, the 13th day of July, 1878.

A. & T. A. RICHARDS ET AL. *vs.* BROOKE MACKALL JR., ET AL. } Eq. Doc. 11. No. 2373.

Ordered by the court that this cause be referred to J. J. Johnson, esq., as special auditor, to state and report to the court, on or before the first Tuesday in October next, the proper metes and bounds of that portion of lot No. seven (7), in square No. two hundred and twenty-three (223), which was sold by the marshal of the District of Columbia to Alfred Richards, and also that other portion of said lot not so
51 sold, and which is directed by the decree in this case to be sold by the present trustees.

By the court:

MAC ARTHUR, *Justice.*

Report of Special Auditor J. J. Johnson, and testimony taken by him.—Filed September 19th, 1879.

In the supreme court of the District of Columbia.

RICHARDS ET AL. *vs.* MACKALL ET AL. } Equity. No. 2373.

Much testimony was taken before me, not so much for the purpose of defining the metes and bounds involved in this controversy, but with a view mainly to show that the proper front of the house was on New York avenue, and not on 14th street. All of the testimony is annexed to this report and filed.

It was agreed by and between the respective solicitors that the special auditor should refer to all the papers in the different
52 cases mentioned in the deed of conveyance, executed by the marshal to Mr. Richards. I have, therefore, concluded, before making a report upon the issues of reference involved under the order of the court, to state in brief all the pleadings, to wit:

On the 19th of January, 1867, George H. Plant filed his declaration, on the law side of this court, against Brooke Mackall, jr., to enforce

a mechanics' lien upon the property now in controversy. The property prayed for condemnation is as follows: Beginning for the same at the northeast corner of the said square, running thence south 44 feet; thence west to the west line of the said lot; thence, in a northerly direction with the west line thereof, to the north line of the said lot; and thence, in a northeasterly direction with the said north line, to the place of beginning.

On the 17th of July, 1867, said writ was served on the defendant, who, on the 3rd of September, 1867, filed his pleas not indebted, and did not promise.

53 The plaintiff, on the 7th of September, 1867, filed his replication.

On the 17th of April, 1868, fi. fa. was issued on the last-above described part of lot, except the words "in a northerly direction" being omitted.

On the 3rd of March, 1869, the marshal returned this writ nulla bona. Previously, however, to wit, on the 26th of February, 1869, another fi. fa. was issued describing the same part of said lot mentioned in the execution of April 17th, 1868.

On the 13th of June, 1870, the marshal returned the writ "levied as per schedule, March 27th, 1869 (see in No. 3477), and satisfied pl'ff's attorney. See his order on back of writ."

On the 28th of September, 1869, the plaintiff's attorney gave an order to the marshal to discontinue the advertisement until further order. And on the 11th of April, 1870, another order was given further postponing the sale until the 16th of May.

On the 19th of January, 1867, Mathew G. Emory filed his declaration at law to enforce his notice of lien, previously filed, to sub-

54 ject to condemnation and judgement the following: Part of lot 7, in square No. 223, beginning for the same at the northeast corner of said lot and running thence south 44 feet; thence west, to the west line of said lot; thence, with a line at right angles to New York avenue, to the north line of said lot, and thence, in a northeasterly direction with the said north line, to the place of beginning.

This last description differs from that described in Plant's execution or declaration.

The writ was served on the defendant on the 17th of July, 1867, and on the 3rd of September, 1867, the defendant, in writing, instructed the clerk to enter judgement with a stay of execution for one year from date.

On the 17th of April, 1868, a fi. fa. was issued on the following part of lot 7, in square No. 223: Beginning at the northeast corner of said square; thence south 44 feet; thence west to the west line of the lot; thence in a northerly direction with the west line thereof to the

55 north line of said lot, and then, with said north line, to the place of beginning. This discription is somewhat changed from that set forth in the declaration.

On the 3rd of March, 1869, the fi. fa. was returned nulla bona.

On the 26th of February, 1869, and before the marshal had made his return of a previous fi. fa., another fi. fa. was issued and levied upon the last above-described property. This last writ was returned on the 13th of June, 1870, "levied as per schedule March 24th, 1869, and satisfied pl'ff's attorney. See his receipt on the back of writ."

The marshal, in his advertisement, describes for sale the following part of lot 7, in square No. 223: Beginning at the northeast corner of

said square and running thence south 44 feet; thence west to the west end of the lot; thence in a northerly direction with the west line thereof to the north line of said lot; thence with said north line to the place of beginning.

56 The deed executed by the marshal contains this description: "Beginning at the northeast corner of said square and running thence south; thence westerly to the west end of the lot; thence in a northerly direction with the west line thereof to the north line of said lot; thence with said north line to the place of beginning."

The difference between the property described in the advertisement and that in the marshal's deed is, that in the advertisement the line is run from the end of the south 44 feet west, whereas in the deed the same line is described as running westerly. The description mentioned in the deed does not conform to the metes and bounds set forth in any of the papers filed in the lien cases.

On the day of Alfred Richards et als. filed their bill, on the equity side of this court, against Brooke Mackall, jr., et al., alleging that the marshal sold a certain parcel of real estate within the courses

57 and distances set forth in the deed last mentioned, and praying that the residue of said lot not sold be decreed to be sold to pay judgement creditors. A decree was passed to sell all of said lot not heretofore sold by the marshal, which decree was affirmed, on appeal, in general term. From this latter decree the defendant Brooke Mackall appealed to the Supreme Court of the United States, and, upon hearing, the decree of the court below was affirmed.

Upon the mandate of said Supreme Court of the United States being filed, the trustees proceeded and advertised for sale all of lot No. 7, in square No. 223, in the city of Washington, not heretofore sold by the marshal of the District of Columbia to the complainant Alfred Richards, to Mr. Shellabarger, for $12,150. To the final ratification of this sale the defendant filed a number of exceptions, which, upon hearing, the court passed an order sustaining the exceptions, and ordered that before sale be made of said property the amount to be sold should

58 be definitely ascertained by some proper legal procedure.

The trustees then filed a petition, asking for instructions from the court as to how they should proceed, which petition was, on hearing, dismissed.

After some further proceedings in the cause, the court passed the following order:

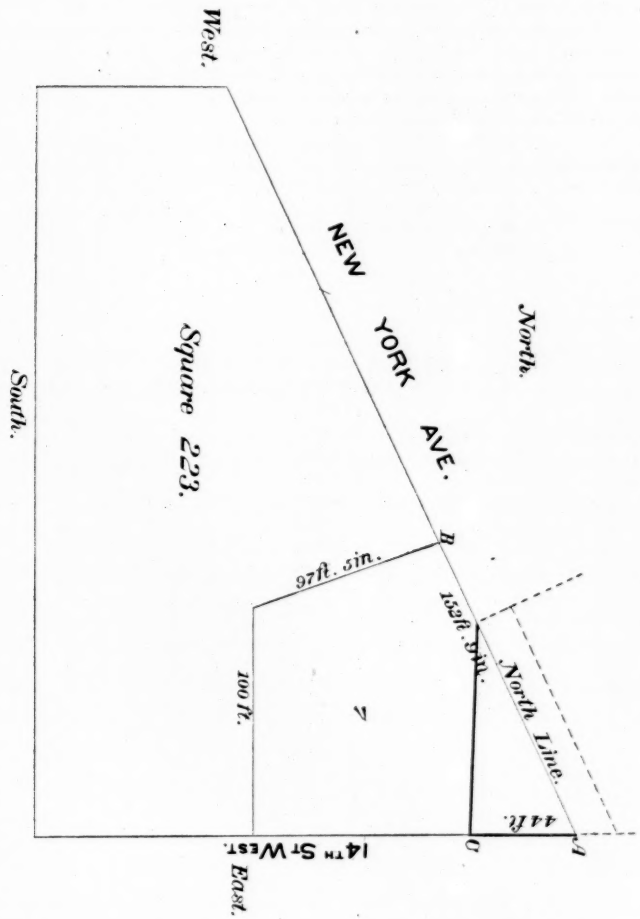
"Ordered by the court that this cause be referred to J. J. Johnson, esq'r, as special auditor, to state and report to the court, on or before the first Tuesday of October next, the proper metes and bounds of that portion of lot 7, in square No. 223, which was sold by the marshal of the District of Columbia to Alfred Richards; and, also, that other portion of said lot not so sold, and which is directed by the decree in this case to be sold by the present trustees." It will be seen from the descriptions set forth in the proceedings in the several suits, that nearly all of them are different, and not one of them agree with that set forth

59 in the deed. The lines run in the advertisement are entirely at variance with those in the deed. Looking at the courses and distances undertaken to be described within the lines run in the different papers filed in the several cases, it will be found impracticable to locate what ground passes under the deed. The descriptions are impossible and its lines cannot be made to meet.

On Exhibit J. J. J., beginning at letter A and running south to C, and thence west to B, will be found all the ground covered by the ad-

vertisement. In strictness, there is but one defined point in this description, and that is, beginning at A. The deed in no way conforms to this last description, except beginning its line at A. It is claimed by complainants, that under the mechanics' lien law they are entitled to have the 44 feet front, running back that width to the depth of the lot. That unquestionably is the meaning of the act. But the complainants

60 EXHIBIT J. J. J.



61 must bring themselves within the purview of the act by laying their lien upon the ground pointed out by the law before they can ask for judgement of condemnation and sale. In the present case their proceedings nowhere seek to subject to sale 44 feet front, running back to the rear end of the lot by that width. From the ground plan

of said building, offered and filed in evidence, it shows that the building only covers 43 feet 3 inches front.

The lines intending to show the courses and distances in all the papers are so irregular, indefinite, and uncertain that it is impossible to make any calculation as to the number of square feet of ground intended to be conveyed.

The defendant claims and argues that from all the circumstances surrounding this sale the special auditor ought to report that no sale was made my the marshal. The special auditor is not at liberty to pass upon that question under the order of reference.

62 I have, however, calculated the number of square feet of ground upon which the house is erected. As the proceedings now stand that is the only definite and positive calculation that can be made. The calculation is made as follows:

Base of triangle $\times \frac{1}{2}$ altitude = area.

	ft.	in.		ft.	in.	
1st triangle,	43	3	altitude;	63	3	base.
2nd "	13	3	"	75	$10\frac{1}{2}$	"

ft.	in.		in.	
43	3	= 519 ÷ 2 =	259.5	
63	3		75.9	
			2335.5	
			12975	
			18165	

sq. inch ——— sq. feet.

144)196960.5(1367.7812

144

529
432

976
864

1120
1008

1125
1008

1170
1152

180
144

360
288

72

63

ft.	in.		
13	3	= 159 ÷ 2 =	79.5
75	$10\frac{1}{2}$	=	910.5
			79.5
			45625

81945
63735

144)72384. 75(502. 6718
720

384
288

967
864

1035
1008

270
144

1260
1152

108

Making—
1367. 7812
502. 6718

1870. 4530 sq. ft. area of lot,
or
sq. ft.
1870. 65 29/125

The entire lot 7, in square No. 223, contains fourteen thousand nine hundred and ninety-eight square feet.

I respectfully report that as the lines in the deed now stand it is impossible for me to define the courses and distances, because of the indefinite and uncertain running of said lines. The lines, as therein indicated, will not take in the property claimed by complain-
64 ant, as having passed under the marshal's deed. Under the advertisement it is impossible, running west, to make that line join the west end of the lot. To follow that line would be to run the line into New York avenue, and some distance north of the west end of said lot. This line is changed in the deed from "west" to "westerly." This change does not, in my opinion, meet the claim of complainant, because the term westerly, unconnected with the number of feet to make its westerly course, is too vague for me to say how far westerly it was intended for the line to run. From the papers before me I can come to no conclusion how much ground was intended to be sold to satisfy the respective liens.

The special auditor, before taking up this case, took the usual oath prescribed by the court.

All of which is respectfully submitted.

Fees, $60.

J. J. JOHNSON,
Sp'l Auditor.

65 SEPT. 30TH, 1878.

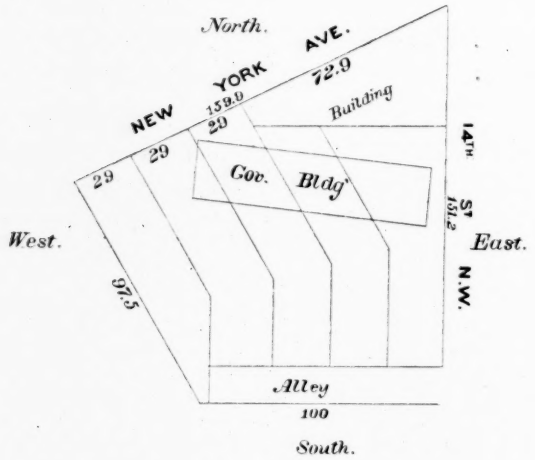
Present, Mr. Webb & Mr. Willoughby.

BROOKE MACKALL, Jr., being duly sworn, says:

I have known lot 7, in square 223, about 25 years. I have had control of it about 19 years. During that time I have consid' New York avenue as the front of this property. When I first took control of the property, about 19 years ago, there were two frame buildings on the lot; one was a large livery stable, and the other was a carpenter's shop.

They both fronted on New York ave. The corners on the corner of New York avenue & 14th street, opposite this property, all front on New York avenue. In June or July, 1864, this lot was subdivided into five sub-lots. This diagram shows the subdivision, which I traced from my plat-book, the subdivision on paper being lost. The paper is herewith filed and marked Exhibit J. J. J., No. 1. All of these lots front on New York avenue according to that subdivision. Before the building
66 was commenced, I subdivided this property into five sub-lots, all fronting on New York avenue. The building was built to cover two of the sub-lots on New York avenue. The reason for the peculiar shape of the building is that the government had possession of the adjoining property back of this building, and had erected a large two-story frame building upon for the settlement of paymasters' accounts during the war.

EXHIBIT J. J. J., No. 1.



The building was so built that a portion of the back wall at the narrow side of this building could be removed without material injury to the building, and the building run down 14th street. I applied for a temporary injunction to restrain the sale under the Plant and Emory
67 judgements, and one of the grounds was that the marshal, in his advertisement, had described the property as fronting on 14th street, when it should have been New York avenue. That temporary injunction was dissolved and the case is still pending.

Cross-examination by Mr. WEBB:

I never placed the subdivision made by me on record. My recollection is, without looking at any memoranda, that I commenced the erection of the building in July or August, 1864. I did not complete the erection of the building myself. I was prevented by the government. I believe Mr. Alfred Richards took forcible possession and completed the building. Mr. Richards was the purchaser at what they call a marshal's sale. The building was to have been built by me as it now is, so that afterwards it could run down 14th street. The front was on

New York avenue running down 14th street. The doors and windows on 14th st. are the same as I designed them; all the doors were
68 store-doors. Mr. Richards has changed the doors on 14th street. They are not as I designed them; they were all doors on 14th st., and no windows. On New York avenue was to be the same, except one little window on New York avenue where there was to have been a small office. Mr. Richards turned what was to be large double doors on N. Y. ave. into windows. The stairway is about where I placed it. My impression is when I commenced the building, the surveyor went there and laid out the lines. Mr. Forsyth was the surveyor.

(NOTE.—It is understood and agreed that all of the proceedings and records referred to in the marshal's deed may be read by the referee.)

Adjourned.

J. J. JOHNSON,
Sp'l Auditor.

Met pursuant to notice, this 28th of Oct., 1878. Present, counsel on both sides, when Mr. Mackall says he desires to explain the diagram as follows:

69 The space on the diagram in red shows the space of ground occupied by the building which I started to erect on the cor. of N. Y. ave. & 14th street. The space in blue shows the ground occupied by the government building when I commenced to build the building on the corner at the time of the so-called sale by the marshal. The building that I started to erect on the cor. was fastened up and locked. Some time after the sale by the marshal Mr. Richards, or his agents, broke into the building, took possession of it and finished it. Mr. Richards has been in possession of the building ever since, and, I believe, from all I can learn, that he has received about $20,000 as rents.

Cross-examination by Mr. WILSON:

I made the diagram, Exhibit J. J. J., No. 1. I traced it from my plat-book. I made the original subdivision, afterwards. The then surveyor of the city, Mr. Wm. Forsyth, drew for me the subdivision, carrying out my diagram, giving the metes and bounds as described
70 by me, mine being simply a rough sketch. Neither of these were recorded. The only one that could have been recorded was the one by Mr. Forsyth, and that was lost. I never had recorded or entered upon the surveyor's books, and signed by me, any record of the subdivision of these lots, because it was lost.

Q. The surveyor has a book in which is made a subdivision of the lots or squares, which, when so signed by the party making the subdivision, becomes the legal subdivision thereof. Has this, or anything approaching it, as regards this lot, been done?

A. After Mr. Forsyth had prepared this subdivision, according to my rough draft, he submitted it to me. I kept it intending to hand it back for record, and, in the mean time, it was lost or mislaid. The reason I did not pretend to make the subdivision was because the lot was peculiarly shaped and required an expert to make a proper subdivision showing the exact metes and bounds.

Mr. Wilson repeats his last question.

71 A. I have not examined the records of the surveyor's office in relation to this lot since this subdivision was made, but my best recollection is that no entry was made on the surveyor's books.

Q. Did you, or not, have any such entry or record made?

A. I have no recollection of ever having any such record made in the books of the surveyor.

Q. When did you make the original of which you made the traced copy?

A. I do not recollect the exact date, but my best recollection is it was a short time before the building was started.

Q. That, then, would be in 1862 or 1863, or thereabouts?

A. It must have been in May or June, 1864.

Q. When was it Mr. Forsyth made his plot?

A. Shortly after that.

Q. And shortly thereafter you lost it?

A. I don't say shortly after; I neglected to file it for record in
72 the surveyor's office. I filed it with some papers, and it was either lost or mislaid by the parties having the papers. It was a very large paper, or bristle board.

Q. Where did you say you filed it?

A. With the claim for rent for a portion of this property with the government.

Q. Then, since that time, there has been nothing done towards the subdivision of that lot, as is shown in this exhibit?

A. Not by me, nor by my direction, nor that I know anything about. The most important part in having the subdivision made by the surveyor, was to build the building in accordance with it. That having been done, there has been no necessity for any subdivision since.

Q. When you say to build the building, you mean only so far as you went, and not that part constructed by Mr. Richards?

A. I had run the building, and nearly finished the building to the 3rd story, and partly that story. Mr. Richards only finished
73 that story & putting on the roof. There has been no change that I know of in what the builders term the ground plan, except the cutting of a door, and possibly a window, in what I term the rear of the building. Possibly three or four windows in the rear of the building—some windows above.

Q. Who was your architect or builder?

A. There was no particular builder, the carpenter work being done by the day. I bought the materials, and the work was done by the day. Mr. John J. McCollum laid nearly all the brick. I had one or two carpenters at different times to make the door frames and set the joist when it became necessary. The plan was drawn for the first building I intended to erect, which was a one-story frame building, by Mr. Morsell. I don't know whether he drew it for the present building or not.

Q. Who was the architect for this building?

A. Without some reflection I can't tell.

74 Q. Who made the plans?

A. Possibly Mr. Morsell, but I will not be sure. No architect had any supervision of the building at all. The bricklayer looked after his work and the carpenter his work. My recollection is that there was a plan and they worked to it. I have not that plan, nor a copy of it. I have made every effort to find the plan and also the subdivision and have been unable to find either. There was intended to be eleven double doors all around, one small door on the side of 14th street, which was to be the entrance up-stairs, and a small office-window on the front of the building on New York avenue, near the narrow side. I have made no inspection, and cannot tell, as I have not examined to see, but it seems some of the doors on N. Y. ave. and 14th st. have been made into windows. The frames of the doors are all there just as I put them. They simply put sash in and made windows of them. They will

75 show for themselves how many have been made into windows. When I say eleven double doors I mean on the first or lower story.

Q. Then the number of doors already there—the number of doors which have been made into windows, and the number of doors walled or closed up—will represent the entire number of doors which you arranged for in the lower story of that building?

A. The frames of the 11 double doors, I believe, are still there. Some of them have been converted into windows, both on New York ave. & 14th st., by sash being placed in the frames.

B. MACKALL, JR.

Sworn to and subscribed to before me this 29th of Oct., 1878.

J. J. JOHNSON,
Sp'l Auditor.

NOV. 12*th*, 1878.

Met pursuant to agreement. Present, Messrs. Webb & Willoughby.

WM. FORSYTH, being sworn on the part of the defendant, says:

76 I reside in this city. I am surveyor & civil engineer, and I commenced in 1835, and have been engaged it ever since. I have been employed by the city and by the commissioner of public buildings. I have been surveyor of the city; know the property in question. The primary front of that lot is on New York avenue, because the avenues are the leading streets. I know that is the case in the whole city. I do not know of a single instance to the contrary. I find upon my book a sketch in pencil of that lot, representing whether they were my views or the party who brought it to me. I do not know, neither can I say, who the party was that got me to make that sketch, but such a sketch is on my book. Exhibit J. J. J. No. 1 resembles the plot on my book, but as to the number of subdivision lines, whether there are as many on my book or not as they are on the exhibit, I don't know. I will

77 look and see. The lots front on New York avenue. The buildings of the other three corners front on the avenue—that is, two of them, and the other is a vacant lot. The sketch on my book was made by myself, but I don't know whose views they were—mine or the party presenting it. I made some survey for Mr. Mackall of that lot about 1864 or 1865. The paper now shown me is in my handwriting. The same is correct.

(The said paper is filed and marked Exhibit W. F.)

EXHIBIT W. F.

Established east & north line, lot 7, sq'r 223, 29th A'g't, 1864.
Examined lines, lot 14, sq. 223, 5th Oct., 1864.

Cross-examined:

The sketch was made in my plat-book, that I always carried along in making surveys. It does not belong to the records. It was my book. I always used that book in surveying. It is not an official plat. I don't know who made the sketch marked Exhibit J. J. J. No. 1. There never was an official subdivision made of that lot to

78 my knowledge. I can't say when the sketch was made in my book; there is no date to it. The property formerly belong*ed* to Commodore Morris, at the corner of V't av. & H s't, fronts on H street.

Com'd' Shubrick's and Mr. Corcoran's property fronts on H s't. I should say the palace near H s't fronts New York avenue. The drug store on the opposite corner fronts on New York avenue. The lot fronts on N. Y. ave. It depends upon the views of the persons owning property whether it fronts on the narrow side of the house or not. I have been in the Palace market. I have not been up stairs. There is an opening on 14th s't. I can't say whether there are any doors on N. Y. ave. or not, except the one at the corner, in the angle. The one at the corner is as much on N. Y. ave. as 14th s't. That is my opinion.

WM. FORSYTH.

Sworn and subscribed to before me this 12th of Nov., 1878.

J. J. JOHNSON,
Sp'l Auditor.

79 NOV. 18, 1878.

Present, counsel on both sides; when JOHN G. ROUS, being sworn, says:

I am a house-carpenter and stair-builder. I have worked in the neighborhood of 30 years in the business. I know the property in question. I worked on that building, for Mr. Mackall; upon one occasion I consulted the plans. It was in the absence of the contractor, when the plan was given to me to see that the work was executed in accordance with the plan. I was not superintending. I was a journeyman, but often Mr. Lee, who was sick or complain'g, and was away, & while he was away Mr. Mackall requested me to superintend the work. While I was superintending the work I had charge of the plans. The front of the building was always considered by me to be on New York avenue, in considering the future intention of the building. [In conversing with Mr. Mackall at that time about it, I took it for granted
80 that New York avenue was the front.] (All enclosed objected to as he'resay.) The reason that the building was built in the shape it is, was, adjoining this building there was a building belonging to the government. There was a small space between them; they built it as close as they could. The south side of that building was to have but one window in it, and the balance of the wall was to be blank so as to cut openings through it any day when the building was extended going south. The wall was left at the southwest corner so as to knock out every other course to tie the other wall in. The south wall stopped at the west wall, so as the west wall could be joined on. There were 11 doors and one window around the building, according to the plan at that time—6 on New York avenue, 4 on 14th st., and one on the angle; at the extreme west end on N. Y. ave. there was one window; at that time it was intended to be doors where there are now win-
81 dows. I think three of them on New York avenue have been changed into windows. There are 4 doorways that have been turned into windows on N. Y. ave. The first floor was intended, I believe, for grocery or provision store. I examined to-day this building relative to street numbers. According to my judgment, the No. 1400 is at the southwest cor. of N. Y. ave. & 14th st., that is, they should be there. There are no numbers there. The only No. between the cor. of 14th st. & N. Y. ave. will be on a drab-painted house No. 1410. That is the first house I came to. That would indicate, in the usual way of numbering, that there were five lots there. The branches of the water mains led off in three vacant lots, and, according to that, this building occupies two lots. The object in putting the staircase on 14th st. was that it

would be communicating with the building that was to be attached
82 to the present one. I examined the drug store on the southeast corner of N. Y. ave. & 14th st.. That store fronts on N. Y. ave.; that has two entrances on 14th st., and one staircase on that street. The plan, as I understood it, there were to be two or three stores on N. Y. ave. when finished. I understood this from Mr. Mackall at the time.

Cross-examined:

Mr. Lee employed me to work on the building. The second floor of joist was on and the brick wall had gone up, I think, to some extent above it when I took charge of it. It is impossible for me to tell how long Mr. Lee was sick or complaining. It might have been a week ro two, but I know it was sufficient for me to become versed in the plans. The plans were in my charge a while. Mr. Lee was sick, and at night were left in the shop. I do not know who prepared these plans. I have heard they were made by Mr. Morsell.
Mr. Lee commenced the work and I executed the work
83 from the same plans that he commenced on. I think there were separate plans for each floor. When Mr. Lee was sick I assisted in putting on the second floor of joist, and did something pertaining to the outside of the house. I was at the shop part of the time. I think Mr. Lee was sick or complaining either in the latter part of October or early part of November. I did not work on the building between Christmas and 1st of January. I was discharged between this time. I think Mr. Lee continued to work on the building until I was discharged. Mr. Lee did not have a foreman on the work. I think he was absent from the building all the time he was sick, & I took charge of the work at Mr. Mackall's request. I think the work stopped a very short time after I left. Mr. Lee discharged me, and Mr. Mackall paid. I worked by the day. I di'n't know how Lee worked. The first and
second floor of joist were on when I left, and I am under the im-
84 pression the jambs of the store doors had been set. It is a long time for me to remember, being only a journeyman carpenter. If I had been contractor, with an agreement, I might recollect it, as I have a pretty good memory; fourteen years ago is a pretty long stretch. I can't say positively what was the distance between the government building & the south wall of this building; you entered the government building on New York ave. It fronted on 14th st. It run west. I am certain the building was there when we commenced the erection of the house in question. I can't say positively whether the stairway was on the original plan where it is now. I know where it is. If the building was converted into stores fronting on New York ave. the stairway need not necessarily be removed; it would run through one of the stores. The intention was that the upper part of the
house was to be separate from the stores. The stairway left
85 as it is, would partially run through one of the stores and divide it. I am under the impression there was an opening left on N. Y. ave. for a stairway. I don't know whether I am correct in this or not. I understand, from what Mr. Mackall said, that he intended to have three stores, the building to front on N. Y. ave. The building on the corner has two fronts. The main front was on N. Y. ave. The angle of the lot at the cor. of 14th st. & N. Y. ave. was cut off. The main entrance of the store is where the angle is cut off; also two entrances to the store on N. Y. ave.; there is one doorway on 14th st. closed up, and the stairway is at the extreme end of the building on

14th st. I examined the numbers of the building at the instance of Mr Mackall. I did not examine the numbers on 14th street. I have not had any conversations with Mr. Mackall since I superintended the building until about two days ago. He asked me to see which
86 way the drug store fronted. I say that the drug store fronts on New York ave. because the front on N. Y. ave. is a press-brick front, and the front on 14th st. is a red-brick front, painted. There are two entrances both on N. Y. ave. and 14th st.

JOHN G. ROUS.

Sworn and subscribed to before me this 18th of Nov., 1878.

J. J. JOHNSON,
Sp'l Auditor.

Adjourned till the 21st inst. at 2 p. m.

J. J. JOHNSON.

NOV. 27TH, 1878.

Met pursuant to adjournment, present Judge Willoughby for Mr. Mackall, when—

WILLIAM T. O. BRUFF, being duly sworn, says:

I reside in this city; I am draughtsman under the city or District government. I have seen plat-book No. 1, containing sewer, water, & gas. Page 247 on this book shows the water and sewer on lot 7,
87 square 223. It shows three lateral connections for sewer, and three house connections for water. The sewer and water connections shows, according to the plat, running beyond to the curb towards the building line on New York avenue. Those three lateral connections are intended to run into subdivisions of that plat. That would indicate these lots, into which these laterals run *into*, fronted on New York avenue.

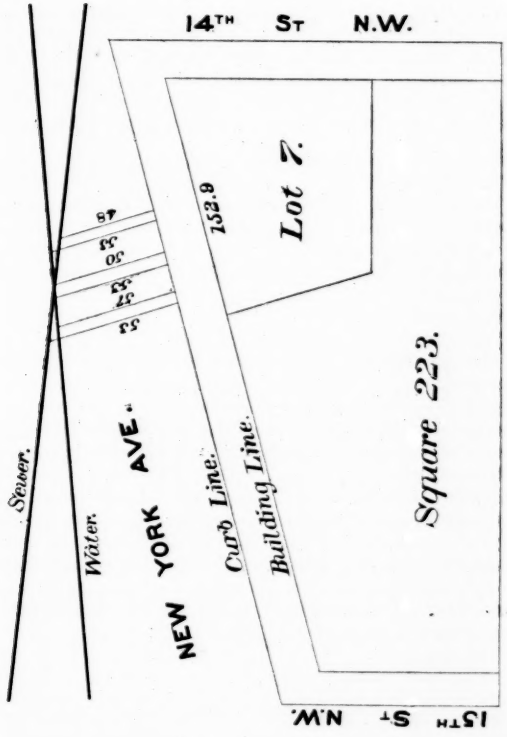
Exhibit W. T. O. B. is just made by me from the book here, and it indicates the laterals for sewer and water for this lot 7; and the original lots appear to have similar connections, which are not on this exhibit.

W. T. O. BRUFF,
Draughtsman of D. C.

Sworn and subscribed to before me, this 27th of Nov., 1878.

J. J. JOHNSON,
Sp'l Auditor.

88 EXHIBIT W. T. O. B.



JAMES M. LATTA, being duly sworn, says: My occupation has been that of a real-estate broker, and did business at the corner of 15th & G streets, since 1870. I have been engaged in that business in this city since 1865. I am well acquainted with the property known as the
89 Palace market, corner of 14th st. & New York avenue. I examined it for the purpose of negotiating a purchase. We said to Mr. Mackall, January, 1871, we thought we could get $4 a foot for original lot 7, square 223. He was to have the privilege of removing the buildings on it. New York avenue is the front of that lot. That is the way I should front it. There is probably one lot, according to depth of the lot, which is at the southeast corner, which would be on 14th street. If fronted on New York avenue the property would be more valuable by from 75 cents to a dollar a foot more than if fronted on 14th st. This proposition to purchase this property was, as we suppose', responsible parties, Mr. James C. Kennedy and Henry D. Cooke.

J. M. LATTA.

Sworn and subscribed to before me, this 27th of Nov., 1878.

J. J. JOHNSON,
Sp'l Auditor.

90 BROOKE MACKALL, Sr., being duly sworn, says:

I purchased the property in controversy on the 19th of Nov., 1851. This property, when I bought it, fronted on New York avenue. Some two or three wooden buildings were on it when I bought it. They fronted on New York ave. My son has had the management of this property some 15 years or more. It was intended to front this building now on it, on N. Y. ave. I never had any idea of fronting these lots on 14th, they were to be fronted on New York avenue.

Cross-examined by Mr. WEBB.

I removed the houses that were on this property when I purchased it. I never built a house on the ground. Some person put up a house on the rear of the southeast corner for an eating house, during the war. I rented it to them. That house was built with my consent. That house was on the SE. corner of that square, and fronted on 14th st. I had nothing to do with building the house on the ground that is
91 now there. I gave the management of it to my son some 15 or more years ago, before the house was commenced. My son was my agent. He built this house as my agent. The house is built in its present shape owing to the house put there by the government. I can't tell the distance between the south wall of the house and the one the government put up there. The government building run east & west. It was 100 feet deep. The house was put in the centre of the lot and run from 14th st. east and west. The north wall of that house was perpindicular to 14th street. I can't recollect whether the wall of this building was 10 or 20 feet from the government building. It has been so long ago I can't recollect. I was not consulted about the plans of the building built by my son. I think I have seen the plan, but I did not take much notice of it, as he had the management of it. I did not purchase any of the materials for the house nor paid any of
92 the workmen.

Redirect.

This eating house was a temporary frame house, and it has never been removed. This government building fronted on N. Y. ave. as well as on 14th street.

Recross.

This government building fronted 100 feet on N. Y. ave. The building was in the centre of the lot. The building fronted both on 14th st. & N. Y. ave. It was one building. The building that fronted on 14th st. was the same building that fronted on N. Y. ave. If you take the building as the front from N. Y. ave. the south was the rear. Then if you take the front from 14th st., the west was the rear. I had nothing to do with erecting the government building. They did it without my consent.

B. MACKALL.

Sworn and subscribed to before me, this 27th of Nov. 1878.

J. J. JOHNSON,
Sp'l Auditor.

93 Adjourned till the 29th inst. a 9 o'clock a. m.

J. J. JOHNSON,
Sp'l Auditor.

Met pursuant to above—present, Mr. Mackall & Judge Willoughby—when—

WM. M. SMITH being duly sworn:

I am acquainted with the building in question. I have occupied this building, from February, 1873, to perhaps Nov. 1875. I was engaged in a green-grocery business there. I went into these premises under Mr. Kennedy, who was the agent for Mr. Richards. I occupied the cellar & first floor. There were two fronts. My main front was on New York avenue. The numbers 1402 & 1404. The door right in the corner is more I should think on New York avenue than it is on 14th st. These Nos. were on the building when I went on New York avenue, and were partitioned off for separate offices. They were known by such numbers and occupied. My bins were in New York avenue because that was my show. I never made any use of the door on 14th st., be-
94 cause it was between two windows. My main steps and cellar were on New York avenue. On 14th st. it was simply a well for air. I had to take everything from the cellar on New York avenue. The principal travel was on New York avenue. I displayed all of my bins and fruits on N. Y. ave. I did not use 14th st., but it was not so available for me as New York avenue front. I never saw any number on this store leading from 14th st. & N. Y. ave. The front on N. Y. ave. is more valuable to the building.

W. M. SMITH.

Sworn and subscribed to before me this 29th of Nov., 1878.

J. J. JOHNSON,
Sp'l Auditor.

Met pursuant to agreement. Present, counsel for defendant, when—

JACOB RITTERSPATCH, being duly sworn, says: I am a carpenter. I worked on the building in question for Mr. Lee, the boss carpenter. The main front of that building is on New York avenue. I had
95 a conversation last Thursday with Joseph P. Lee, in relation to this building, at my place on 11th & G streets. He asked me first what I wanted with him. I stated to him that Mr. Mackall would like to see him; that he did not know whether he was in the city or not. He wanted me to see Mr. Lee, to see what his feelings were towards him. I went to see him, but did not see him; so he called to see me, & I told him Mr. Mackall wanted to see him. He said he did not want to see him for anything. He did not like him. I then started on the building. I asked him if he remembered the property in question, and he said "Yes." I told him, "You know as well as I do that New York avenue is the main front." He said, "Yes, that is so." I told him both fronts were finished alike. He said, "Yes, that is so." He did not express any doubt about it. I said to him, "You know that it was Mr. Mackall's intention to run the building down, but was stopped by the government building," and he said "Yes, that is so."

Cross-examined:

96 I worked on the building in question. Mr. Lee employed me. Mr. Lee paid me. I worked by the day at carpentering. I was sent by Mr. Mackall to see Mr. Lee as to how his feeling was towards him. He did not ask me to ask him anything about this building. Mrs. Mackall merely told me the case was up again, and asked me if I remembered anything about the building, & I told her I did as well as I remembered it the day I worked there. I knew there was a dispute

about the front from him talking, as the case had been up several times. I first heard of the dispute of the front this last November some time, the latter part. I took it from what me and Mr. Mackall were speaking about. Mr. Mackall said to me, some wanted to establish the front one way and some another; that was all he said to me. I took it then that there was a dispute. Mr. Mackall did not mention the names of those who said the front was one way and some the other way.

97 He said one man said he was not certain whether the house fronted New York avenue or not. He did not ask me which way I thought that it fronted. He did not tell me the name of the man. Mr. Mackall did not say at that time the way he thought it fronted, but he did at the time the work was going on. Mr. Mackall was all the time with us, & I was well acquainted with him long before he started that building, and I heard him say then which was the front of the building. In the latter part of Nov. Mr. Mackall and I accident'ly met on La. ave. He did not ask me then which I thought was the front. He asked me if I remembered about the building. I passed the building to-day, when I went to the Treasury. I live on N. Y. ave., & I go right straight through. I did not go to the building to visit it. I am not now engaged in business for myself. I kept tobacco store until the spring.

J. RITTERSPACH.

98 Sworn and subscribed before me this 3rd of Dec., 1878.

J. J. JOHNSON,
Sp'l Auditor.

BROOKE MACKALL, Sr., recalled:

Some years ago, when I lived on E st., Mr. Richards called to see me. He told me that he was satisfied that the title of this property was in me; that the property was lying idle, unimproved, & he wanted to make an arrangement with me; that he proposed building on this vacant property if I would let him have it for a term of years; the building to front on New York avenue, & the present building to be brought down 14th st.; after so long a time occupied by him it would revert to me. I declined to enter into any arrangement with him, and I told him I thought his statement to Brooke jr.'s mother was calculated to prejudice her against him, & that it was outrageous. He wanted the use of the

99 rear of the lot for those buildings. Brooke, jr., was present at that conversation.

Cross-examined:

Q. State, if you please, what statement was made by Mr. Richards to Brooke Mackall, jr., mother that you characterized as outrageous and calculated to prejudice her against him?

(Objected to.)

A. I can't exactly explain to you now. It was something, I thought, out of order. I can't express it to you.

Q. Do you mean to say you don't recollect what that statement was?

A. I can't exactly remember at this time.

Q. Do you recollect when Mr. Richards made that statement to Mrs. Mackall?

A. Some time before he called to see me.

B. MACKALL.

Sworn and subscribed before me this 3rd of Dec., 1878.

J. J. JOHNSON,
Sp'l Auditor.

100 BROOKE MACKALL, Jr., recalled, & says the government took possession of part of lot 7, square 223, Dec. 23rd, 1863, and left Aug. 28th, 1868. The first story was designed by me for a market house or grocery store. The openings for doors on New York ave. were so arranged that at some future time, when the government gave up the property on the south side, to run down 14th st., that two or more stores could be made fronting on N. Y. ave. There are now on N. Y. ave. two doors; there are also four openings which I intended for doors which were made into windows; there is one door now on 14th st.; two of the openings which I intended for doors have been changed into windows; the door on the corner is as I intended it. One reason for having the door on 14th st. was to have the entire front on N. Y. ave. for the store; the other reason was N. Y. ave., being more valuable than 14th st., I thought I would take the stairway off there.

101 I also intended the stairway on 14th st. to answer for a stairway for an addition or extension of the building down 14th st. I never did show a plan of this building to Mr. Emery. I never drew a plan of the building. I simply arranged with Mr. Emery for the stone, & he was given the dimensions of them, for sills and belt course. I never said nor intimated to any one that I intended 14th st. for the front. The government building fronted on both streets; it run due east & west. It fronted on N. Y. ave., & run through to 14th st., & there had a similar front. This building was about ten feet from the building in question. I was not allowed to build any closer, because they said it would obstruct the light on that side of the building. The building cost me about $10,000; that I put on it myself. Under the so-called marshal's sale he bought the unfinished building, & the amount of ground which he claims in the marshal's deed, according to Mr. Latta's offer $4 per square foot, would be worth $28,000, which

102 would be very low figures. Mr. Richards paid $2,500 at the so-called marshal's sale. I was present on E st. some years ago when Mr. Richards called to see my father in relation to leasing for a term of years. I remember the conversation as my father relates it; he states it correctly. From what I can understand, Mr. Richards has received about $20,000 as rents. Mr. Lee, towards the latter part of the work, was unfit for work, because he was unwell, and I put Mr. Rouse in charge of it. Before that he was working under Lee. Lee was superintending the work, and I gave him the money to pay off the carpenters.

Cross-examined:

The store part of the building is now used for a market-house. I passed there repeatedly lately. I have not been inside of the building; from the outside I think it is pretty much the same that it was under

103 Frebry & Smith. The counters front New York avenue. On N. Y. ave., are two big doors, & people seem to be going in and out there, & also on the corner door. I should say the N. Y. ave. front was the main entrance. I have never stood there any length of time to see anything about it. There are two double doors on N. Y. ave. now, & the balance are windows. There is a corner door which fronts more on N. Y. ave. than it does on 14th st. My intention was,

when I had the plans made, to make that door front conspicuously up New York avenue. I believe both the doors on N. Y. ave. are used for entrance; I never noticed particularly. In passing by I have seen persons going in and out of the doors on N. Y. ave. I have seen the doors opened—both the doors—is my recollection. I will not swear positively. I do not know that the most wester'most of these doors is not used. I paid every Saturday night for the workmen. I can't tell how much I paid towards the material. I can't tell how much I paid without
104 reference to memoranda. I can give no idea of it. To the best of my recollection, I only owed for brick and lumber. Mr. Hine said to me in a conversation with Mr. Webb, acting for Mr. Richards, said they would like to settle, and indicated that the matter could be settled for $12,000; he advised me to see Mr. Webb about it. I did so, after running for some time to Mr. Webb's office, to get an itemized account of the amounts Mr. Richards claimed to have spent upon the building; I finally got an itemized account amounting to $25,000; upon the payment of this sum, the matter between Richards and myself would be settled. I took the itemized account to Mr. Hine, & we came to the conclusion that nothing was meant by the proposition to settle through Mr. Webb, as the account was unreasonable and exorbitant. I do not know what became of the account.

Redirect:

Several times before the marshal's sale I offered Mrs. Wheatly,
105 Emery, & Richards property, without any incumbrances on it, worth considerable more than their claims against me. Mr. Wheatley and Mr. Emery said they did not care to take property. Afterwards, Mr. Richards said he would look at the property; possibly he would take up their claims and take the property. After looking at the property with me, he stated he thought my proposition a very fair one; he said something about disposing of the lots to the building association, provided he bought them. I thought from what he said that there was a chance of arranging the matter pleasantly with all parties. I heard nothing from him in relation to it, but afterwards the property in question was advertised for sale by the marshal.

B. MACKALL, JR.

NOV. 4TH, 1878.

Met pursuant to adjournment. Present, counsel on both sides, when—

106 CHARLES EDMONSTON, being sworn, says I am a carpenter and builder, and have been so engaged in this city for 44 years. I believe I finished the upper part of the building in question. The brick work was all up when I commenced work on it. The building fronted on 14th street.

Cross-examination:

The opening for a front door was on 14th street, and the opening for stairway joist was on 14th street. This building is longer on New York avenue than it is on 14th street. That is the principal reason I say it fronts on 14th street. According to the construction of the building I say it fronts on 14th street. It fronts on New York avenue too. I know nothing of the original plan of the house. I know nothing of the design of those who commenced the house. I should call New York avenue the end of the house and 14th street the principal front of the house.

Q. On what street does Shephard's building on the corner of
107 Pa. ave. & 11th street front?

(Objected to as nothing to do with the case.)

A. I should say Pa. ave. was the principal front of the house, but it fronts all around. That is different from the house in question. The main entrance is on 12th street.

Redirect:

I don't know anything about the building. I never have been in it.

Recross:

The avenue house has two fronts. The main entrance is on 7th street. That is so with many buildings in town. As a general thing where you make the front door they call the front of the house.

CHARLES EDMUNSTON.

Sworn and subscribed before me this 4th of November, 1878.

J. J. JOHNSON,
Sp'l Auditor.

ALFRED RICHARDS, being sworn, says: I am complainant. I completed the building in question, after I purchased it, in the man-
108 ner it is now. I did not change the plan of the outside. I don't know what I did on the inside. I found what I thought was the front door on 14th, and I kept it as the front door and made my stairway to it. I did not change the stairway according to what I saw in the house.

Cross-examined:

The brick work was up two stories and part of the 3rd story. I did not put any windows on the south side. The openings were in the wall on the south side when I took possession, but I put a door in the south side. I would not swear positively to the window. I have never made an opening or closed one on the street sides. (Mr. Webb offers a photograph in evidence, which is marked Exhibit W. B. 1, and filed, also a drawing marked Ground plan, which is filed as evidence). The building was not locked up when I purchased at the sale; some
109 windows were fastened up. It was ready to tumble down by old age. After I bought the building I took possession of it. I can't say now whether I took it or not by permission of any one. Mr. Choppin can tell whether it was locked.

ALFRED RICHARDS.

Sworn and subscribed to this 4th of Nov., 1878.

J. J. JOHNSON,
Sp'l Auditor.

MATHEW G. EMORY, sworn, says:

My business was formerly stone-cutting and building here in this city, from 1842 to 1872. I know the property in question. I furnished the stone sills and tri'ings that went into that building. My understanding is the front was 14th street. That is my recollection of the plan. I know the side of the building runs along on N. Y. av. I made the front and sills. I saw the plan of the building—a rough sketch. That plan indicated which was the front. It was marked on the
110 plan the front sills and side sills. I have not refer'ed to any book since. I expect that would state Mr. Brooke Mackall, jr., brought the plan there.

Cross-examination:

I presume the front door sill is like the store door sill in length and thickness. I don't think there is any difference between the sills on 14th st. & N. Y. ave., unless it is in length. I would not say the window caps and sills are not the same in length. I think I furnished the first stone used. I furnished the stone and set the sill courses, and I think I set the window heads. I did not build the brick work. The foundation was there. I think I set them all. The furnishing & setting of the sills and caps of itself would not indicate which was the front of the building. What I formed my judgement from was what was said to me, and the plan. It is also my own judgement. Mr. Mackall showed me a sketch of the plan of the front of the house. It showed the doors and windows, and, my recollection is, the front
111 door was on the left-hand side of 14th street, front. This is the door leading up stairs. I don't believe I could draw or sketch a plan as it was exhibited to me. This has been ten or more years. I recollect the plan full well, notwithstanding the lapse of 15 years.

The cross-examination of Mr. Emory resumed as follows:

I don't know that I would, in making a contract for stone, designate the stone for the front. If they were all alike, I should not. I don't say that they were all alike in the property in question. My recollection is, there is a sill course, both first and second story, and probably they are all the same thickness in width. In that case I should make a bid by the running foot, and in that case, so far as I was concerned, it would not matter which was called the front. In this case it was of no importance to me which he called the front. (Witness looks
112 at paper now shown him, and says this is the proposal I made at the time. The said paper is filed and marked Exhibit M. G. E.) It will appear from this exhibit that the front-door sill of the entrance leading to the house is a part of that sill-course.

EXHIBIT M. G. E.

WASHINGTON, *Nov. 12th*, 1864.

B. MACKALL, Jr., Esq.:

D'R SIR: I propose to furnish the following brown-stone work for your new building cor. of 14th st. & New York av., viz:

One sill-course, 8 in. rise, & set the same, at $3.25 per running foot; one window-sill course, 2nd story, 8 in. rise, set, for $2.00 per foot in length; 24 moulded window-heads, 5′ 2″ long, 10½ rise, o. g. mould, 3″ projection, for $2.50 per foot in length; 13 w. sills, 4′ 2″, 5″ rise, for $1.10 per running foot. (The heads & sills to be delivered, not set.)

Yours, M. G. EMERY.

113 This bid does not show the front. I say now that the word front was written on the plan. The plan showed the well-holes. It was written on the plan 14th street front. I don't recollect whether there is a well-hole on N. Y. ave. My recollection is the sketch he showed only the front on 14th street. I would not say the words front on New York avenue was not on the plan, or that they were. I will not say Mr. Mackall did not speak of New York avenue front, as well as of 14th street. Of course they were at work on New York ave.; he might have spoken of the work there. I did the work on the Bank of the Republic. The entrance up stairs there is on D st., but the front is on 7th

st. The 7th st. front leads into the bank, and to the basement. In advertising rooms for rent, they say entrance on D st. front.

I don't know whether, generally, the entrance up stairs designates the front of the building or not. The entrance to the dwelling
114 of the avenue house is on 7th street. My opinion is the front of all those buildings there front on Market space. It is frequent that the entrance to the stairway may be on one street and the front on another.

M. G. EMERY.

Adjourned till Thursday next, at 1 p. m.

J. J. JOHNSON,
Sp'l Auditor.

DEC. 2ND, 1878.

Met pursuant to adjournment. Present, counsel on both sides, when—

JOSEPH P. LEE, being duly sworn, says:

I reside in this city. I am a carpenter. I know the property in question. I superintended the building of the house. The first floor was intended for what it is now used, for a market house—butchers. The building fronts east, on 14th st. I think there has been no change in the interior of the building since I built it. I passed by the
115 building lately. I think there was an office cut off back of the first floor. We got the building up to the third story, and that story was partially built; it might have been seven or eight years before the building was completed; I don't know. Mr. Morsell prepared the ground plans for the building. I do not recollect of any other plans. I don't think there were any elevation plans.

Cross-examined:

I have two reasons for saying that this building fronts on 14th st. I think at the time that building was put up that ground was more valuable on 14th st. I think so, but am not positive, and I considered the main entrance on 14th st., and there was no other provisions made for getting up and down stairs. Those are the two reasons. I built that building by the day; I built the carpenters' work; I superintended the construction of the building. Both the N. Y. ave. front & the 14th st. fronts are finished alike. It fronts on N. Y. ave. as well
116 as on 14th st. I am not on very good terms with Mr. Mackall. I know Jake Ritterspaugh. I don't remember whether he worked there or not. He may have done so. I had a little talk with him last Thursday at his place of business. I did not tell him there I thought the main front of this building was on New York avenue, nor do I think I told him so in substance. I don't think I told him so; in fact, I am sure I did not, because I never thought New York ave. was the front. I did not tell him that both fronts were finished alike and that New York avenue was the main front.

JOSEPH P. LEE.

Sworn and subscribed before me this 2nd of Dec., 1878.

J. J. JOHNSON,
Sp'l Auditor.

S. T. G. MORSELL, being duly sworn, says:

I am architect, builder, and superintendent. I made the
117 plans for the building in question. I think the building was

constructed according to the plans made by me, so far as it went. The main front I considered to be on 14th st. Being a corner the N. Y. ave. would be a front also. I can't say positively why the building was built in its present shape, but my impression is Mr. Mackall said he wanted to preserve the lot square on 14th st.: that this was but a series of buildings. It has been a long time ago. It seems to me this building was put up after the government building was torn down. I am not certain. I had nothing to do with putting up this building.

Cross-examined:

This building has a front on New York avenue. The drug store opposite fronts on 14th street is my impression. I can't state that positively. At the time this building was built N. Y. ave. was in a terrible condition, & 14th st. was the only one used. I know Mr. Thomas
118 E. Young, the carriage builder. I told him I only drew the plan, and I had nothing to do with the construction of the building, and I say so still. My impression is both fronts, general exterior, were to be finished alike. I don't speak positively from recollection which was to be the front of this building. I think one double door on N. Y. ave. was turned into a window. I paid no attention to the building. I would not swear as to the conversation with Mr. Mackall positively. It is my impression, I think, the back runs at right angles to N. Y. ave., what there is of it, but it is an acute angle, and the front is square with 14th street. At that time the principal street was 14th st. As I have before remarked, I will say I will not be positive which was the front.

S. T. G. MORSELL.

Sworn and subscribed before me this 2nd of Dec., 1878.

J. J. JOHNSON,
Sp'l Auditor.

119 ALFRED RICHARDS, recalled by Mr. Webb, and says:

The No. of the house in question is marked 720 14th st. John O. Evans occupied the house first after I built it, as an office. He occupied the room as it is now by the store, so far as my knowledge goes. Some portion of the partition was torn down to put in an ice box. Mr. Frebrey made the change in the rooms; Mr. Smith came in as a partner with Frebrey afterward. I don't know who put up the partitions for the office in the rear of the buil ling. The water service pipes were brought to the curb after I built it, that is on N. Y. ave., to the space beyond the house; I think I showed them a plan that I expected to build some houses in the rear of this building; I think the water supply will be found to correspond with those plans.

Cross-examined:

I intended to build four dwelling houses, 19 feet & some inches.
120 I calculated I owned 44 feet back. Those buildings I intended to have front on N. Y. ave. I never anticipated the purchase of any more of that lot; I did bid on these lots a long time ago; I had no idea of buying it when I bid.

Q. If you had built those four houses, and owned the balance of the lot, would you not then extended the subdivision to the south side of the lot?

A. No, sir. I never have talked about extending those buildings to the rear of those lots. I went to see Mr. Mackall. A party I knew had some money; I found Mr. Mackall, sr., on E st. I asked him for his son, & he told me he was not in; while I was talking to the old gentle-

man, Brooke, jr., came across the street, and when both of them were together I said to them, I know of a party who had some money to lend, & if they thought proper they could borrow the money on
121 that property and pay me what they owed me. The old gentleman answered, and said when he wanted advice he would send for me. Some other little conversation passed & I left. Nothing was said at that time about my building.

A. RICHARDS.

Sworn and subscribed before me this 2nd of Dec. 1878.

J. J. JOHNSON,
Sp'l Auditor.

Exceptions to report of special auditor, which was filed Oct. 9th, 1879.—Filed Oct. 9th, 1879.

In the supreme court of the District of Columbia.

RICHARDS ET AL. *vs.* MACKALL ET AL. } Eq. No. 2373.

And now comes the plaintiffs and take exception the report of the special auditor, filed in the above above-entitled cause, on the 19th of September, 1879, and say that they except to the said report—

First. Because the said special auditor fails to determine what
122 were the proper metes and bounds of that portion of lot seven, (7) in square numbered two hundred and twenty-three (223) which was sold by the marshal of the District of Columbia to Alfred Richards, and also that other portion of said lot not so sold, which is directed by the decree in this cause to be sold by the present trustees; inasmuch as it appears from the evidence taken in the said cause, and from the records of the supreme court of the District of Columbia, that the said portion of the said lot so sold by the said marshal was to be described and bounded as follows, that is to say beginning at a point at the intersection of New York avenue and 14th street west, running thence south with the line of 14th street, forty-four (44) feet, thence in a westwardly direction to the west line of the said lot, and thence with said west line to the line of New York avenue, and thence with the
123 line of said New York avenue eastwardly to the point of beginning.

Second. The plaintiffs further except to the said report of the said special auditor, because they say that if the said special auditor was unable to determine from the description contained in the deed made by the said marshal to the said Alfred Richards what were the exact metes and bounds of the said parcel of ground sold by him, yet it was his duty to report to the court, that is and by the terms of the said description the southron line of the said parcel of ground was to run from a point in 14th street, forty-four (44) feet south from the intersection of that street with New York avenue, westwardly so as to reach the rear line of the said lot, and to run thence with that line to the line of New York avenue; said description indicating that the piece of ground so described was to consist of a parallel*ma*gram, having its southern line parallel with New York avenue, and the west line
124 of the same length with that on 14th street, and based on the west line of the said lot.

Third. Said plaintiffs except further to the report of the special audi-

tor, and say that he has erred in not stating to the court what portion of the said original lot is contained in the metes and bounds of the several discriptions, to which he has referred in the said report; that the court being instructed what the several descriptions were, might have determined how the said tracts of land were to be properly described, with a view to the determination of the issue in said cause.

W. B. WEBB,
Solicitor for Complainant.

Decree in special term, December 11th, 1879.—Exceptions to special auditor's report sustained, and sale ordered.

In the supreme court of the District of Columbia, the 11th day of December, 1879.

ALFRED RICHARDS ET AL. *vs.* BROOKE MACKALL ET AL. } No. 2373. In equity.

This cause coming on to be heard upon exceptions to the report of the special auditor, made under the order of this court referring the same to him to ascertain the boundaries of certain parts of a lot of ground, in the city of Washington in the proceedings in this cause particularly mentioned, and upon a motion to modify the order of 24th July, 1877, by which the trustees were forbid to sell the certain portions of the said lot, under the decree passed for that purpose, until the said boundaries were ascertained as aforesaid, and said exceptions having been duly considered, it is ordered by the court this 11th day of December, 1879, that the same be sustained, and the court proceeding to determine the said boundaries in accordance with the said order of July 24th, 1877, does further
126 order that the trustees under the said decree, shall sell in accordance with the terms and provisions thereof, all that portion of the said lot seven in square 223, in the city of Washington, lying south of a line drawn from a point on the line of Fourteenth street northwest, westwardly and parallel with New York avenue to the west line of the said lot seven. This order is made without passing upon the validity of the said marshal's sale.

By the court.

MAC ARTHUR, *Justice.*

Appeal to general term, December 27th, 1879.

In the supreme court of the District of Columbia.

RICHARDS ET AL. *vs.* MACKALL ET AL. } No. 2373. Equity.

The clerk will enter appeal to general term from orders of December 11th, 1879, as if December 27th, 1879.

W. WILLOUGHBY,
Sol. for Def'ts.

Appeal, as ordered, entered.
By the clerk.

Decree in general term, April 5th, 1881.

127 In the supreme court of the District of Columbia holding a general term.

ALFRED RICHARDS ET AL.
vs.
BROOKE MACKALL, JR., ET . } No. 2373. Equity.

This cause coming on to be heard, and having been argued by counsel and submitted to the court, and application having been made by Thomas Wilson to be removed from the trust to which he was appointed heretofore in said cause, for reasons satisfactory to the court, it is by the court in general term, this fifth day of April, eighteen hundred and eighty-one, ordered, adjudged, and decreed that the said Thomas Wilson be, and he is hereby, discharged from the said trust, and that Westel Willoughby be, and he is hereby, appointed trustee in the place and stead of the said Thomas Wilson, and shall be authorized to act as co-trustee with William B. Webb, heretofore appointed trustee in
128 this cause, upon giving bond, with security, to be approved by the court, in the sum of ten thousand dollars; and it is further ordered, that so much of the decree of the court in special term as orders that a sale be made of the property mentioned in the proceedings, be, and the same is hereby, affirmed, and that the said trustees, William B. Webb and Westel Willoughby, shall proceed at once to sell, under the terms and conditions and for the purposes set forth and contained in the decree passed in this cause on the first day of May, 1873, and affirmed by the Supreme Court of the United States on appeal, all that part of lot numbered seven (7), in square numbered two hundred and twenty-three (223), in the city of Washington, in the District of Columbia, lying south of a line drawn from a point on Fourteenth street forty-four feet south of the northeast corner of said lot, and running thence, parallel to the line of New York avenue, to the west line of the said lot, this decree to be construed as not determining any question
129 of title to any portion of said lot seven lying north of said line.

And from this decree the defendant, B. Mackall, jr., prays an appeal to the Supreme Court of the United States, which is allowed.

By order of the court.

D. K. CARTER,
Ch'f Just.

In the supreme court of the District of Columbia, the 6th day of April, 1881.

RICHARDS ET AL.
vs.
MACKALL ET AL. } No. 2373. Equity.

Know all men by these presents that we, Brooke Mackall, jr., and Thomas E. Young, of Washington, D. C., are held and firmly bound unto Alfred Richards, Thomas Wilson, & others, complainants, in the suit of Alfred Richards et al. vs. Brooke Mackall, jr., & others, No. 2373 in equity in the supreme court of the District of Columbia,
130 in the full sum of five hundred dollars, to be paid to the said complainants in said suit, their certain attorney, executors, adminis-

trators or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals, and dated this sixth day of April, in the year of our Lord one thousand eight hundred and eighty-one.

Whereas lately at a general term of the said supreme court of the District of Columbia, in a suit depending in said court between said Alfred Richards, Thomas Wilson, and others, complainants, and Brooke Mackall, jr., & others, defendants, a decree was rendered against the said defendant Brooke Mackall, jr., and the said Brooke Mackall, jr., having obtained an appeal in the aforesaid suit:

Now, the condition of the above obligation is such that if the said Brooke Mackall, jr., shall prosecute his appeal to effect, and
131 answer all damages and costs if he fail, to make his plea good, then the above obligation to be void; else remain in full force and virtue.

B. MACKALL, JR. [SEAL.]
THOMAS E. YOUNG. [SEAL.]

Sealed and delivered in the presence of—
W. WILLOUGHBY.

Approved April 6th, 1881.

D. K. CARTER,
Ch'f Just.

132 *Authentication of record.—Clerk's certificate.*

CLERK'S OFFICE,
Supreme Court of the District of Columbia:

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 3rd day of October, 1881.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Assistant Clerk.

Justice's certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, jr., clerk of the said court, to be in due form.

Witness my hand and seal this 3rd day of Oct., 1881.

D. K. CARTTER, [SEAL.]
Chief Justice.

Clerk's certificate to justice's official character.

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court duly commissioned and qualified.

Witness my hand and the seal of said court this 3rd day of October, 1881.

[SEAL.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Assistant Clerk.

(Indorsement on cover:) No. 1018. Brooke Mackall, jr., appellant, vs. Alfred Richards et al. District of Columbia sup. court. Filed October 11th, 1881.

112-269

IN THE SUPREME COURT

OF THE

UNITED STATES.

BROOKE MACKALL, JR., Appellant
vs.
ALFRED RICHARDS *et al* Appellees } No. 1018

BRIEF OF APPELLANT ON MOTION TO DISMISS APPEAL.

I.

This motion professes to be made upon the grounds, that the decree is not final, and that it was made simply in executing a former mandate of this court. In the argument filed in its support, no reasons are given to show why the decree is not final, except that it is a decree made in accordance with such former mandate; the last mentioned ground being the principal reason given for a dismissal of the appeal.

II.

We claim first, that these are not proper grounds for a motion to dismiss an appeal, but are to be considered only at the hearing. The Supreme Court will not entertain a motion to dismiss a cause, or to advance it for argument, on the ground that the appeal, or writ of error, is without merit, is sued out for delay, or the like. The power to adjudge damages is the only power the court posesses to prevent frivolous appeals and writs of error.

Amory vs. Amory 91 U. States 356.

The court too has said: "We will not decide motions to dismiss before the record is printed, when there is any question about the fact on which the motion rests."

National Bank vs Insurance Co., 100 U. S. 43.

An examination of the record will show a very serious dispute as to the facts. We most certainly and in good faith deny, that the decree appealed from "was made in the course of the execution by the court below of the mandate of this court, and in exact conformity with that mandate."

We emphatically disclaim all idea of attempting to avoid in any manner the former decree affirmed by this court; but we justify this appeal by the language of this court in the principal case cited by the counsel for appellee, and from which he on page six of his brief presents an extended extract. We cite what he omitted: "If in the progress of the execution of the decree after its entry either party is aggrieved he may appeal from the final decree in that behalf: but such an appeal will bring up for examination only the proceedings subsequent to the mandate."

Stewart vs. Solomon, 97, U. S. 362.

The principle upon which the appeal was dismissed in that case, was as stated that the second decree was "in exact accordance with our mandate upon a previous appeal." That is not the case now before the court. "When the subordinate court commits any substantial errors in executing the mandate of the Supreme Court it is well settled law that a second writ of error or appeal, as the case may be, will lie to correct the error and to cause the mandate to be executed according to its tenor and effect."

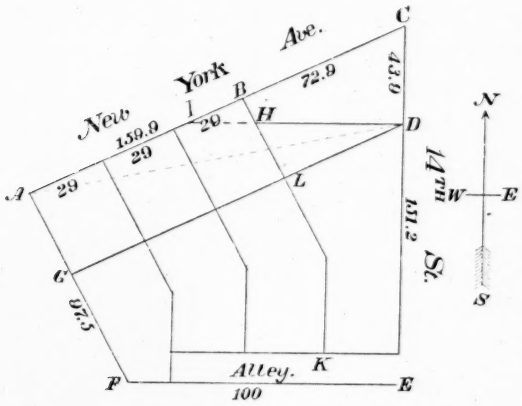
See also 20 How. 135—481.

III.

We refrain from entering into a full discussion of the

merits, deeming it improper to do so upon this motion, and not feeling called upon now, to disclose to our adversaries all we may have to urge at the proper time; but it is proper to show, that our complaint arises from the action of the court, not in "exact accordance with the former mandate."

The controversy concerns lot No. 7, in square 223, at the southwest corner of New York avenue and Fourteenth street, in Washington D. C., of which the following is a diagram substantially as it appears from the book of the surveyor of the city, made before the erection of the building, and in conformity with which the foundations of the building were laid.



A. C. E. F., is the entire outline of the lot, B. C. D. H., is a building thereon now known as the Palace market.

A. C., New York avenue, is claimed by the appellant to be the front of the lot, C. E. 14th street, is claimed to be the front by the appellees.

The three crooked lines running from N. Y. ave. and the building, to an alley bordering on F. E., show the smaller

lots, into which the original lot No. 7 was divided, as appears upon the surveyors book.

The bill of complaint was filed by a considerable number of persons, claiming to be creditors of this appellant, Brooke Mackall, Jr., and its object was to show, that he had an equitable interest in the portion of this lot as "not heretofore sold by the marshal of the District of Columbia to the complainant Alfred Richards."

In the bill it is alleged, that a portion of this lot, described therein as follows to wit: "beginning at the northeast corner of said square, and running thence south forty-four feet, thence westerly to the west end of the lot, thence in a northerly direction with the west line thereof to the north line of said lot, then with said northerly line to the place of beginning," had previously been sold to the principal complainant, Alfred Richards, by the marshal in pursuance of proceedings founded upon mechanics liens, under a statute which provides (Sec. 704 R. S. D. C.) that "the ground on which the building is erected, and a space of ground equal to the front of the building, and extending to the depths of the lot, or lots, on which it is erected, shall also be bound by the said lien," &c., and the object of the bill was, to subject the remainder of such lot to the lien of the judgment creditors who filed the bill.

The sole controversy was, as shown by the answer, and all the proceedings, and the decree itself, whether the said remainder of the lot was the property of B. Mackall, Sr., or whether B. Mackall, Jr., had an equitable interest therein, subject to the lien of such judgments.

The only point adjudged by the decree was, "that the title to the said real estate in the proceedings in the said cause particularly mentioned, that is to say, to all of lot numbered seven in square numbered two hundred and twenty-three in the city of Washington, not heretofore sold by the marshal of the District of Columbia, to the complainant Alfred

Richards, is vested in the defendant Brooke Mackall, Jr." The decree adjudges nothing else, but provides for a sale of this remainder, to satisfy the lien of the judgments, and encumbrances thereon.

This decree being affirmed, the mandate came in the following terms:

"You therefore are hereby commanded, that such execution, and proceedings be had in said cause, as *according to right and justice* and the laws of the United States, ought to be had, the said appeal notwithstanding."

This mandate simply affirms the decree. It does not make any new order. The authority of the trustees appointed by the decree is not found in the mandate, but in the decree, affirmed, it is true by this court. There is no thought of attempting to reopen the question thus settled.

IV.

When however the trustees, appointed to make the sale, proceeded to do so, they met a difficulty which had not before occurred to any one. A new question was then first presented, and that was—*what was* the property described in the decree, and which they had been directed to sell?

Upon *this question* we claim that the proceedings below have not been "according to right and justice," as the mandate requires.

In order to determine the property as described in the bill, and in the decree, it became necessary to ascertain what had before been sold to Alfred Richards by the marshal. On examining the description of the mechanics lien, upon which the proceedings authorizing the sale were had it was found to be as follows:

"Beginning at the southwest corner of New York avenue and 14th street, thence running south 44 feet on 14th street, thence *west* to the west line of said lot number seven, thence in a northerly direction, with the west line thereof, to the

north line of the said lot, thence in a northwesterly direction to the place of beginning."

This is also the substantial description in the executions, and in the advertisement of sale. An inspection of the diagram will show that the line running *west* D. I. as described, would run into New York avenue, at about the middle point of the line bordering on such avenue. It was claimed however by Richards, that this line should run parallel to New York avenue, by the line D. G. The dotted line A D represents the southern line of the lot as described by the marshals deed as claimed by the appellant.

This question involved the title to 4700 feet of ground valued by the most reliable witnesses at 84 per foot making over $18,000.

[See testimony of Latta, Mackall, &c.]

It was also claimed by the appellant, that under the act in relation to mechanics liens; the front being upon New York avenue the property described thereby should have been that contained within the lines, B. C. E. K., instead of taking the whole of the front, making the remainder of very little value, as the evidence in the record conclusively shows.

(See testimony of Latta, &c.)

Even if 14th st, were the front according to the mechanic's lien law, it is claimed, that by that law, the lines embracing the lots, should run perpendicularly to such front, and not at such acute angle as the mechanic may wish, which would support our view, that the southern boundary according to such law, should be the line D. I.

The trustees who were also the counsel of Richards, proceeded to make sale, but recognizing, in part, the difficulty, say, at the sale, as appears by writing accompanying their report, and now in the record; which is the correct description, that is, whether the southerly line runs parallel to New York avenue, or directly west, "is a legal question,

which the trustees do not undertake to determine. If Richard's line goes westerly by the wall of his house, then the present purchaser gets a greater number of feet in his lot. But if Richard's line goes westerly by the fence continued to the rear of the lot, then the present purchaser gets fewer number of feet. This leaves the number of square feet indeterminate, and therefore we will not sell by the foot, but in bulk."

Under such an announcement, of course the property sold at an immense sacrifice. Exceptions were taken to it, which were sustained, and the court further decreed, "That before sale can be made of said property, the amount to be sold, must be definitely ascertained by some proper legal proceeding."

(See decree of Judge Wylie of July 24, 1877.)

Thereupon the plaintiff, believing an ejectment suit a "proper legal proceeding" to determine this question, caused such a suit to be brought by the party holding the legal title not a party to this suit to the lot in question, which suit is still pending.

(See affidavit of Brooke Mackall, Jr.)

But the appellees, not satisfied with this, persisted in an effort to ascertain the proper boundaries by a reference to an auditor to take testimony and report thereon.

Now we claim this mode of proceeding to have been radically wrong. To determine such an important question, involving the title to property valued at $18,000, there should be some regular suit or proceeding, in which there should be a pleading, setting up distinct allegations, to which issue could be taken, upon which the judgment of the court could be had, with an unquestioned right of appeal, if necessary, to the Supreme Court of the United States. Certainly the holder of the legal title should be a party to such inquiry. The bill in this case was a mere

creditors bill, and presented only the question, whether the appellant had an *equitable* interest in the balance of the lot not sold by the marshal. *There was no suggestion of any controversy as to boundaries.*

The submission of such a question too, entirely changed the relations of the parties to the suit. It presents a question between Alfred Richards alone, and the Mackalls. The other judgment creditors have no interest in common with him. On the contrary their interests are adverse to the claim, for it is for their interest, that the property to be subjected to the payment of their judgments, should embrace this ground in controversy. In fact the claim of Alfred Richards as owner, is adverse to, and incompatible with his interest as a judgment creditor, in which character alone he brought his suit. He thus sought, by this incidental inquiry, a determination of his ownership of the valuable property in dispute in direct antagonism to his interest as a judgment creditor, and to the interests of his co-complainants, without a suggestion of his claim in the bill, or written allegation to which issue might be taken, or without making the holder of the legal title a party—a proceeding we claim to have been in plain violation of the necessary and well established rules of practice of courts of equity, if not indeed wholly beyond the jurisdiction of a court of equity.

But the reference was made. A very large amount of testimony was taken before the auditor, and thereupon he made his report, which is very full, elaborate, and exhaustive. He recites the various descriptions of the different mechanic's liens, the execution, the advertisement of sale, and finally the marshal's deed. He also refers to the testimony as to which is the proper front, and concludes, that, on account of the inextricable confusion arising from all these, it is impossible to ascertain the boundaries, and so reports. Indeed, it is perfectly manifest from his report,

that the only possible solution of the question, is, by declaring the sale by the marshal entirely void. At the proper time we shall be prepared with authority to show that such must be the result. Of course, on the coming in of this report, the court had no better data upon which to determine the boundaries, than it had at the time the decree was made, two years before, directing, that before sale the amount "be definitely ascertained by some proper legal proceeding."

But the court, then held by another judge, boldly took the matter in hand, and adjudged and decreed as follows:

"And the court, *proceeding to determine the said boundaries*, in accordance with the said order of July 24, 1877, does further order, that the trustees under the said decree shall sell in accordance with the terms, and provisions thereof, all that portion of the said lot seven, in square 223, in the city of Washington, lying south of a line down from a point on the line of 14th street northwest, westwardly and parellel with New York avenue, to the west line of said lot seven. This order is made without passing upon the validity of the said marshal's sale."

From this decree an appeal was taken to the general term, where the order to sell the portion of the lot south of the line running parallel to New York avenue was affirmed; but leaving the question of title to the portion north of such line undetermined and unsettled.

V.

Now this decree is not "In exact accordance" with that upon which the mandate issued; but differs widely from it.

By the former decree, the trustees were directed to sell *all* that had not before been sold by the marshal.

By this decree a portion is directed to be sold but not necessarily *all* that had not before been sold. The last de-

cree leaves it undetermined, whether the part directed to be sold *is* all that had not before been sold.

The first decree made no determination whatever as to the part before sold. But the last one *does* determine, that the portion represented in the diagram by D. E. K. L. was a part, not before sold by the marshal, and substantially determines, that the front of the lot was on 14th street, and not on New York avenue, a point which may be vital in determining the validity of the title north of the line D. G.

VI.

But it is urged, that this is not a final decree. Whether it is or not as we have before shown is not a question to be determined upon a motion to dismiss the appeal, but only upon a full argument, made upon a printed record, at the final hearing. Then we will be fully prepared, as we think, to show that it is a final decree from which an appeal may be taken. But we will offer some suggestions now upon this point.

By the first decree, made after the issuing of the mandate, it was adjudged, "that before sale can be made of said property, the amount to be sold must be definitely ascertained by some proper legal proceeding." This decree was eminently right, and no appeal was taken from it. It gave to us a substantial right. That this was sufficiently final for the purposes of an appeal to the General Term cannot be disputed; and not having been appealed from within thirty days, according to the rules of the court, it become an established right. Independently of such a decree it is a well established principle, that questions affecting the title, questions of jurisdiction, questions of boundaries, and other questions, materially affecting the value, shall be ascertained before it shall be sold by the court. It is a substantial right of the party whose property is to be sold by order of

the court, that it shall not be sacrificed by having it sold subject to such doubtful questions.

See Caldwell vs. Taggart, 4 Peters 201.
Brent vs. Moran, 25 Grat. 104.
Coles Adm'r vs. McRae, 6 Rand, 644.
Lipscomb vs. Rogers, 20 Grat., 658.

This right so established by the decree, and to which we are entitled according to well established principles of law, is the right for which we have been struggling ever since it became manifest that such serious questions arose, *and it is that right denied to us by the decree from which this appeal is taken, but which had not been denied by the former decree.*

Every lawyer in respectable practice has had cases in which injunctions against the sale of real estate by a trustee in a deed of trust to secure a debt have been granted upon similar grounds.

Suppose, for example, that in this case, the trustees were acting under a deed of trust, to sell the part of the lot which had not previously been sold by the marshal, that a bill is filed setting up, that a serious, question arises as to what was such portion, that in order to avoid such question, they propose to sell a portion of the lot, that, by the way they thus propose, it will cause a needless sacrifice of the property, that the situation of the lot is such that it cannot be divided into such separate parcels without practically destroying the value of the whole ; and that therefore the question of title as to the whole should be settled before the sale; would it be said , that an injunction would not lie in such case, and if denied would there not be a right of appeal?

Suppose, for example, a lot 15 feet wide, worth nothing except for building purposes at that width, and a question arises as to seven feet and it is proposed to sell the eight feet undisputed and leave the other seven feet for further action, and in such case it be alleged, that such division

would render the whole worthless, or nearly so; would not this be a proper case for the interposition of a court, and for an appeal if necessary?

Now this is just what we claim. The decree of July 24, 1877 shows it, the proceedings and the evidence show it, and an inspection of the diagram must demonstrate it.

We are not *now* obliged to satisfy the court that our claim is just, but only to show, that we have, at least a right to be heard.

Nor can it be charged that by such means there would be unnecessary delay. Had the complainants proceeded as required by the decree of July 24, 1877 they could have had the question settled long ago.

VII.

The construction given to the decree by the counsel for appellees, (p. 5 of his brief,) is that the boundary line has been definitely ascertained. This certainly would present a final determination from which the right of appeal must be unquestioned. But I do not so construe it. The question of title by the marshal's sale to the part represented in the diagram, by the letters A. I. D. G. and which as we have before seen embraces property valued at over $18,000, is left undetermined by the express terms of the decree of the General Term.

But an inspection of the diagram will show, at once, how this works a great wrong to the appellees leaving a wedge shape running to a point on 14th st. Suppose the sale should be made as decreed, and then it should be ascertained in the pending ejectment suit, or otherwise, that the proper boundary line should be D. I., thus leaving that to be sold under the first decree, or the property of the appellee without liability to such sale. Is it not perfectly manifest that, in such shape, it would be almost entirely worthless? If it

could be sold with the balance, it would bring its full value, but if required to be sold separately, its value is substantially destroyed.

Can it be, that from such a wrong, or from liability to such a wrong, there can be no appeal? The execution of the decree from which this appeal is taken is inevitable destruction to our rights, to the value of the property properly subject to the first decree. No remedy for such a wrong can be suggested but by an appeal. The purchaser at the sale decreed would hold his title in spite of all we could do. All we ask now is, that we may be heard before being sacrificed and destroyed; and we therefore insist, that the motive to dismiss the appeal should be denied.

W. WILLOUGHBY,

Counsel for Appellant.

112 219

IN THE

SUPREME COURT

OF THE

UNITED STATES.

BROOKE MACKALL, SENIOR,
BROOKE MACKALL, JUNIOR, AND OTHERS,
Appellants,

vs. No. 1018.

ALFRED RICHARDS,
THOMAS WILSON, AND OTHERS,
Appellees.

W. B. WEBB,
For Appellants.

BYRON S. ADAMS, PRINTER, WASHINGTON, D. C.

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vs.

ALFRED RICHARDS,
THOMAS WILSON, AND OTHERS,
Appellees.

No. 1018.

The motion to dismiss the appeal in this case is made upon the ground: first, that the decree or order appealed from is not in any sense a final decree, and cannot be brought into this court for review upon appeal; and, second, that it was made in the course of the execution by the court below of the mandate of this court, and in exact conformity with that mandate.

The original bill in the case was brought in the Supreme Court of the District of Columbia, by certain judgment creditors of Brooke Mackall, Jr., to subject a part of a lot of ground in the City of Washington to the payment of their judgments. (R., 1–18.)

A decree granting the prayer of the bill, directing a sale of the property in question, and appointing trustees to make such sale, was made, from which an appeal was taken to this court, where the decree was affirmed. (R., 29–32, 33–36.) The order affirming the decree below was made on the 19th day of March, 1877, but the case is not reported.

Upon the filing of the mandate of this court, the trustees named in the original decree proceeded to sell the property in question, and did sell the same. Exceptions were filed to the sale, (R., 41,) the principal ground of exception being that the description of the property contained in the public notice of the sale given by the trustees was uncertain and indefinate, and that by reason thereof the price obtained at the sale was inadequate. The exceptions were sustained and the sale set aside. By an order subsequent to the foregoing proceedings, (R., 50,) the court below sent the cause to a special auditor, with instructions to ascertain the exact metes and bounds of the property directed to be sold under the original decree passed therein. (51–64.) The special auditor reported that he was unable to determine from the proof submitted to him the exact metes and bounds of the property to be sold; and the court, upon exceptions filed to the report, made an order determining said metes and bounds, and ordering the trustees therein named to sell in accordance with such determination. (126–129.) From this order, which was affirmed in General Term, the present appeal is taken. (129.)

It will be seen that this is a second appeal to this court in the same cause. The uniform ruling has been that such an appeal brings up nothing for re-examination, except the proceedings subsequent to the mandate.

The Lady Pike, 96 U. S., 462;
Rose vs. *Himely*, 5 Cranch, 313;
Roberts vs. *Cooper*, 20 Howard, 481.

In the consideration of this motion, it is material to ascertain, definitely, what the present appeal does bring to this court for review, in order that the question, whether the appeal can be entertained, may be determined. The appeal is taken by appellants from the order of the court below, directing the trustees appointed by the original decree to sell all of the lot decreed to be sold, south of a certain designated line. All of the proceedings relating to the sale made by the trustees, and the exceptions thereto and the proceedings of the court below in regard to these exceptions, have nothing to do with the present inquiry, and are not to be considered in connection with it. As a matter of fact in the case, the exceptions in question were taken by the appellants and were decided in their favor, and were consequently not included in the appeal prayed by them. It is contended that the decree appealed from was made for the purpose of carrying into effect the mandate of this court, affirming the original decree of the court below, and that being a decree in execution of the original decree, and not a final decree from which an appeal will lie; this appeal, therefrom, must be dismissed.

Car et al. vs. *Hoxie*, 13 Pet., 462.

A decree or order made in execution of a former decree or order is not a final decree in the sense of the statute.

Forgay et al. vs. *Conrad*, 6 Howard, 201;
Humphrey vs. *Baker*, 103 U. S., 736.

It remains to be shown that this was a decree in execution of the original decree of the court, and that it was in

all respects in accordance with the mandate of this court. In the case of the Lady Pike *supra*, the court says: "Needful explanations may be derived from the original record, but the re-examination cannot extend to anything that was decided in the antecedent appeal." Acting upon this language of the court, it will be permitted to refer to the proceedings in the case prior to the original decree, to ascertain the intention of the court in making it, and thus reaching a proper conclusion as to the proceedings that led to and resulted in the decree which is the subject of the present appeal.

The Santa Maria, 10 Wheaton, 442.

The bill filed alleges that under a judgment recovered at law by the complainants against Brooke Mackall, Jr., the marshal of the District of Columbia sold a certain parcel of real estate in the City of Washington, contained within the courses and distances following, (R., 4:) "part of lot 7 in square 223, beginning at the northeast corner of said square and running thence south 44 feet, thence westerly to the west line of said lot, thence in a northerly direction with the west line thereof to the north line of said lot, then with said north line to the beginning;" that the sum realized from such sale did not pay the judgment debt, and they asked that the remaining portion of the said lot might be sold to pay the balance due them. (R., 5.) Both defendants answered the bill, the one making no denial that the property sold was properly described, (R., 22, 23.) and the other expressly admitting it. (R., 19.) Upon this bill and the answers thereto, and the other proceedings thereunder, the court decreed, "that the title to the said real estate in the proceedings in said cause particularly mentioned, that is to say, to all of lot 7 in square 223, in the City of Washington not heretofore sold by the marshal is

vested in the defendant, Brooke Mackall, Jr., and that the same be sold for the purpose of paying the judgments and other incumbrances set out in the proceedings." (R., 30.)

This decree was, upon appeal, affirmed in this court, which by its mandate, commanded (R., 36) "that such execution and proceedings be had in said cause as, according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding." It was determined that the description, in the decree, of the property to be sold under its provisions was defective. The language of the decree was "all of lot 7 in square 223, in the city of Washington, not heretofore sold by the Marshal." In view of this, and with intent to carry the decree into effect in such manner as best to accomplish its purpose, and do what was best and most for the interests of all concerned, the court made an order appointing a special auditor to ascertain and report the proper description of the property to be sold, and, upon the coming in of his report, passed the decree, from which the present appeal is prayed. That decree simply ascertains that the portion of the lot in question not sold by the Marshal "is that part of it lying south of a line 'drawn from a point on 14th street 44 feet south of the north~~west~~ east corner of the said square, and running parallel with New York avenue to the west line' of said lot." (R., 126–128.)

It is submitted that this decree simply carries into effect the original decree, in accordance with the mandate of this court. That decree must be construed with reference to the prayer and other pleadings in the cause. If the language of the decree is indefinite and uncertain, all that indefiniteness and uncertainty disappear when reference is had to the bill and answers. No want of certainty in the description of the property to be sold appears upon the pleadings

Crocket vs. *Lee* 7, Wheaton, 525;
Graham vs. *Railroad Co.*, 3 Wall., 710.

It is submitted that the decree appealed from is in exact accordance with the mandate of this court in the former appeal. In *Stewart* vs. *Salomon*, 97 U. S., 361, this court decided that—

"An appeal will not be entertained by this court from a decree entered in the Circuit or other inferior court, in exact accordance with our mandate upon a previous appeal. Such a decree, when entered, is, in effect, our decree, and the appeal would be from ourselves to ourselves. If such an appeal is taken, however, we will, upon the application of the appellee, examine the decree entered, and, if it conforms to the mandate, dismiss the case with costs."

In *Ex parte Sibbald* vs. *The United States*, 12 Peters, 492, it is held:

"When the Supreme Court have executed their power in a cause before them, and their final decree or judgment requires some further act to be done, it cannot issue an execution, but shall send a special mandate to the court below to award it. Whatever was before the court, and is disposed of, is considered as finally settled. The inferior court is bound by the decree, as the law of the case, and must carry it into execution according to the mandate. They cannot vary it, or examine it for any other purpose than execution; or give any other or further relief; or review it upon any matter decided on appeal for error apparent; or intermeddle with it, further than to settle so much as has been remanded."

And see—

Hinckley vs. *Morton*, 103 U. S., 764;
Humphrey vs. *Baker*, *Id.*, 736.

In *Cook* vs. *Burnley*, 11 Wall., 677, this court declares that "it is equally well settled that the second writ of error

brings up nothing for revision, except the proceedings subsequent to the mandate; and it follows that if these proceedings are merely such as the mandate commanded, and were necessary to the execution of the mandate, the writ of error will be dismissed, as any other rule would enable the losing party to delay the execution of the mandate indefinitely, which cannot be admitted."

W. B. WEBB,
For Appellees.

To WESTELL WILLOUGHBY, ESQ.,
Counsel for Appellants:

Take notice that on Monday, the 12th day of December, 1881, or as soon thereafter as counsel can be heard, I will move the Supreme Court of the United States to dismiss the appeal in the above cause, on the grounds stated in the foregoing brief.

W. B. WEBB,
Counsel for Appellees.

WASHINGTON, *November 17, 1881.*

112-369

SUPREME COURT U. S.
FILED.
OCT 23 1884
JAMES H. MCKENNEY,
CLERK

SUPREME COURT OF THE UNITED STATES.

BROOKE MACKALL, JR., *et al.*, *Appellants*,

vs.

ALFRED RICHARDS, *et al.*, *Appellees*.

No. 72.

Brief of Appellant B. Mackall, Jr.

STATEMENT.

A general creditor's bill was filed May 2, 1871, by the appellees, as judgment creditors of Brooke Mackall, Jr., setting up their judgments, and that he had an equitable interest in that portion of lot 7, square 223, in Washington city, which had not before been sold by the Marshal of the District of Columbia to said A. Richards, diagrams of which are on pp. 19 and 22 of the record. The description of that part sold by the Marshal is alleged to be in the bill as beginning at the northeast corner of said square, thence running south forty-four feet, thence *westerly to the west end of the lot*, thence in a northerly direction with the west line thereof to the north line of said lot, thence with said north line to the place of beginning. (p. 2.) The true description of the south line, according to the mechanic's liens, the levy, and the advertisement of sale, was that such line ran *west* to the west line of said lot (p. 17.)

NOTE.—By a clerical error, not discovered until the preparation of this brief, in the printed record of this decree, the words "not heretofore sold by the Marshal of the District of Columbia," have been omitted. This decree is correctly printed in the record of this case, upon the first appeal.

May 1st, 1873, a decree was made adjudging the equitable title of such lot, "not heretofore held by the Marshal of the District of Columbia," to be in Brooke Mackall, Jr., and directing a sale thereof for the satisfaction of the judgments by trustees appointed for the purpose. (pp. 9, 10.)

An appeal was taken from this decree to this court, which affirmed it, and upon the mandate being sent down, the trustees, upon proceeding to make the sale, found a serious doubt as to what was the course of the south line; then, for the first time, this question appearing as to the title to about 4,700 feet of ground, estimated to be worth $4.00 per foot. But the trustees made sale, recognizing this doubt but leaving it an unsettled question for the purchaser. (Report, pp. 13, 14.)

Exceptions being taken to such sale for this reason, they were sustained, and July 24th, 1877, it was ordered "that, before sale can be made of said property, the amount to be sold must be definitely ascertained by some proper legal procedure." (p. 15.) The defendant, believing ejectment to be such "proper legal procedure," caused such suit to be brought. (p. 15.) But the complainants, about a year afterwards, procured a reference to a special auditor to make inquiry as to the true course of this line. (p. 16.) A large amount of testimony was taken by this special auditor (pp. 21 to 39), but he reports: "It is impossible for me to define the course and distances because of the indefinite and uncertain running of said lines," giving his reasons therefor in full. (p. 21.)

Thereupon the court *suo motu*, "proceeding to determine the boundaries," directed a sale of the part of the lot lying south of such line, but "without passing upon the validity of the said Marshal's sale" (p. 40.) Upon appeal to the General Term this decree, so far as it *determined* the boundaries, was not affirmed, but directed such sale, but expressly declares that "This decree to be construed as not determining any question of title to any portion of said lot seven lying north of said line."

It is from this decree that this appeal has been taken.

Motion was made to dismiss this appeal on the ground that no new question was presented subsequent to the decision upon the first appeal.

But the court denied the motion at the October Term of 1881, saying:

> "This motion is denied. We do not think this a proper case for the application of the rule in *Stewart* vs. *Salomon*, 97 U. S., 361. A very material order, fixing the boundaries of the land to be sold has been made since our mandate upon the former appeal went down January 16, 1882."

Assignment of Errors.

The appellant assigns as errors the following:

1st. Such decree is erroneous, because the boundary lines of the property, in relation to which the bill was final, are expressly left undetermined, and it leaves a portion of such lot between the disputed lines of such shape as to entirely destroy its value.

2nd. It ignores the right which the appellant had acquired by the decree of July 24th, 1877, unappealed from, to have, before a sale, such boundaries ascertained "by some proper legal procedure."

3rd. It was made before any determination by a legal procedure then pending; to wit: a suit in ejectment.

4th. The evidence shows that the front of the lot is upon New York Avenue, having been subdivided into five lots fronting on such avenue as shown by diagram; (p. 22); that the sale to Richards, purporting to be under mechanics' lien, cut off the front of all such lots, while the sale as directed by this decree, would cut off the rear of all of such lots, and if under the ejectment suit then pending and undetermined, such sale should be set aside, it would leave all of such fronts as of little value and the property would be destroyed.

5th. The evidence shows a controversy as to the southern boundaries of the part sold by the Marshal, and if determined in the then pending suit that such line should run west, the wedge between the same would be entirely valueless.

6th. The sale as directed involved a needless sacrifice of the property, and was in entire disregard of the rights, and probable rights of this appellant.

I think it is due to the court that it should be informed, although it is not a part of the record now before it, that since the decree was rendered in this case and appeal taken, another decree has been made in another suit between the principal parties setting aside the Marshal's sale, and directing an account, so that in the opinion of the appellant the practical question here is substantially a mere matter of costs.

I think it proper also to refer to the opinion of the court in setting aside such sale as authority upon the question now before this court. This opinion is in *Mackall* vs. *Richards*, 3 Mackey, R. Among other things the court says:

> "There are equitable considerations also in favor of sustaining the legal objection. It is obvious that this sub-division of the lot by the Marshal was an *utter destruction of the property*. The most valuable frontage of this ground is on New York Avenue. The Marshal undertook to take a slice from the whole front on the north, making it front *on the side* of the lot which was *fatal to the market value of the property*, and would neccessarily cause the sale to be made at a great sacrifice."

Quoting the Marshal's description, the court say:

> "We have come to the conclusion that the sale cannot be sustained on account of the patent and palpable ambiguity and uncertainty of the description of the property, both in the advertisement and in the Marshal's deed."

After stating the reasons for this in full, the court further say:

> "But there is nothing by which this deed could be corrected. It is absolutely void upon its face."

This case has also been appealed to this court, but the decree is in force, and there is a pending motion to dismiss such appeal.

The appellant made a pretty full argument upon the questions presented in his brief upon the motion to dismiss the appeal in this case annexed hereto, and to which he begs leave to refer.

W. WILLOUGHBY,

Counsel for Appellant.

112-369

IN THE

SUPREME COURT OF THE UNITED STATES.

BROOKE MACKALL, JR., *et al*, *Appellants*,
vs.
ALFRED RICHARDS, *et al*., *Appellees*.
} No. 72.

Brief of Appellant, B. Mackall, Jr., in Reply.

The brief of appellee's counsel (p. 3) states, that the court determined that the property to be sold under the decree of May, 1873, and affirmed by this court, embraced all south of the disputed line. This is true, but not the whole truth. It leaves undetermined whether a valuable piece, 4,700 feet, estimated at $4.00 per foot, is also embraced within it.

> "This decree to be construed as *not determining* any question of title to any portion of said lot seven lying north of said line." (p. 41.)

There was no dispute as to that south of said line, and, therefore, nothing whatever decided. The question of boundaries was left as it was before the decree of July 24th, 1877, and is still just as undetermined as it was when the decree of 1873 was made, which directed a sale of *all* not before sold by the Marshal.

This disposes of all the argument as to the *power* of an Auditor or of a Court of Equity to determine the boundary.

It is idle to discuss such power, when no power has been exercised, and the complaint on our part is, that no power at all has been exercised, and *no* determination has been made.

The decree of July 24, 1877, directed that, before sale, *some* proceeding should be had to ascertain the definite amount. This has not been done by *any* proceeding, either at law or in equity, except that the whole sale has, since the decree appealed from, been entirely set aside.

Counsel for appellees undertake to say that the original decree decided that a conveyance was made to appellant. But such decree does not decide anything, except that he had an equitable interest, subject to sale under the supervision of an equity court.

Counsel argues that "an order made in aid of the execution of the decree of this court cannot be reviewed here." It was determined by this court that the order was not of this character simply, in denying the motion to dismiss the appeal.

Counsel go outside of the record (p. 8) to state that since the decree from which this appeal was taken, the ejectment suit then pending has been decided, and that the plaintiff had no title, and could not maintain the action. They omit to state that the plaintiff there was not the appellant here, and that it was his brother. It was held that he did not have the legal title. But, following him outside of the record, we find that the appellant here did, by a suit in equity, set aside this sale of the Marshal altogether, and obtained a decree for an account, not only of *mesne* profits, but also of the very judgments held by the appellee on account of which he now seeks this sale. (See Washington Law Reporter of Oct. 18th, 1884.)

We call special attention to the reasoning of the court in that case, in reply to the argument of appellee's counsel, as to the boundaries, and to the fact that such question of

boundaries is *now* decided between these parties, and in such a manner as to demonstrate what was before a possibility, that the sale, as ordered in the decree appealed from, would be an absurdity, and an utter destruction of the property.

The original decree, affirmed by this court, decides nothing except the equitable title of appellant, and that there should be a sale.

The mandate is to carry out this decree according to right and justice. It appearing from the uncertain terms of this decree that further action of the court became necessary before a sale could properly take place, and that such action has been had, it would not be at all in conflict with such decree, and it would be according to right and justice that, before such sale, an account should be taken, to ascertain the *amount* of the liens. This has never been done. It would be impossible, without this, for the appellant to avoid the necessity of a sale, by payment, if he should desire it, and he certainly should have such opportunity in some way. Great changes, too, may have been made since the judgments, which are from about thirteen to nearly twenty years old. Such account has been ordered in the suit referred to, in which the sale was set aside, and it would not, perhaps, be deemed visionary to imagine that the amount of such judgments may be somewhat affected by the *mesne* profits chargeable against the appellee.

W. WILLOUGHBY,
Counsel for Appellant.

112-369

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1884.

NO. ~~933~~. 72.

BROOKE MACKALL, JR.,
Appellant,

vs.

ALFRED RICHARDS, *et al.*,
Appellees.

Brief of Appellees.

WM. B. WEBB,
ENOCH TOTTEN,
Counsel for Appellees.

WASHINGTON, D. C.:
R. O. POLKINHORN & SON, PRINTERS,
1884.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 72.

BROOKE MACKALL, JR., *Appellant*,

vs.

ALFRED RICHARDS, *et al.*, *Appellees*.

Brief of Appellees.

The facts of the case as shown by the Record, are as follows: On the 2d day of May, 1871, (R., p. 1,) Alfred and Thomas A. Richards, trading as A. and T. A. Richards, filed a bill in the Supreme Court of the District of Columbia, alleging that they, with others joined with them as complainants, were judgment creditors of Brooke Mackall, Junior; that for the purpose of enforcing the payment of their judgments they had caused executions to be levied upon certain property, in the city of Washington, belonging to said Brooke Mackall, Junior, described as follows, that is to say, part of lot seven (7) in square two hundred and twenty-three (223), beginning at the northeast corner of said square, and running thence south forty-four feet, thence

westerly to the west end of the lot, thence in a northerly direction with the west line therof, to the north line of said lot, then with said north line to the place of beginning: that the same was sold by the Marshal of the District of Columbia, to Alfred Richards, one of the complainants, and that a deed therefor was duly made and delivered to said Richards as such purchaser; that the amount realized from said sale was insufficient to pay the judgments of complainants; that Mackall, Junior, was the owner of the remaining part of said lot seven (7), in said square two hundred and twenty-three (223), and was clothed with the title thereto by sundry deeds particularly mentioned in said bill of complaint, but that he concealed and suppressed said deeds, and kept the same from the Land Records of the District of Columbia, for the purpose of hindering and delaying complainants in the recovery of their said judgments. The bill prays for discovery as to title, to property, sale thereof, and general relief. The answer of Mackall, Junior, to the bill, admits the sale of part of the lot by the Marshal, as described, but denies his title to the portion sought to be subjected to the judgments, and Mackall, Senior, through whom, the bill avers, Mackall, Junior, derives title, alleges that he gave the lot to Mackall, Junior, but never gave him a deed therefor. (R., pp. 6, 7.)

Proofs were taken in the cause, and, upon full hearing, the court, on the 1st of May, 1873, (R., pp. 9 and 10,)

> "Decreed that the title to the said real estate in the proceedings in the said cause particularly mentioned, that is, to say, to all of lot number seven, in square number two hundred and twenty three, in the city of Washington, not heretofore sold by the Marshal of the District of Columbia, to the complainant Alfred Richards, is vested in the defendant Brooke Mackall, Junior, and that the same be sold for the purpose of paying the judgments, and the other incumbrances particularly set out in said proceedings, or that may be

any other way existing thereon," from which decree an appeal was prayed to this court where it was affirmed. (R., p. 11.)

The trustees named in the decree proceeded to make sale of the property under its provisions, sold the same and reported their sale to the Supreme Court of the District of Columbia, where, upon exceptions, (R., p. 13), the sale was set aside. (R., p. 15). In the order of the court sustaining the exceptions and setting aside the sale, the Supreme Court of the District of Columbia, directs "that before sale can be made of said property the amount to be sold must be definitely ascertained by some proper legal proceedure." (R., p. 15.)

On the 13th of July, 1878, the court made another order, referring the cause to a special auditor to state and report to the court the "proper metes and bounds of the portion of lot seven (7), in square 223, sold by the marshal to Richards, and of the portion directed by the decree in this cause to be sold by the trustees." (R., p. 17). The special auditor took a great amount of testimony about the matter referred to him, all of which is made part of the record, and reported that he had come to no conclusion as to the portion of ground intended to be sold. (R., p. 21). To this report the complainant, Alfred Richards, filed exceptions (R., 39–40), which upon full hearing were sustained; the court determining that the property to be sold under the decree of May 1, 1873, affirmed by the Supreme Court of the United States embraced, "all that part of lot numbered (7) in square numbered two hundred twenty-three (223), in the City of Washington in the District of Columbia, lying south of a line drawn from a point on Fourteenth street, forty-four feet south of the northeast corner of said lot, and running thence parallel to the line of New York Avenue, to the west line of said lot." From this order the present appeal was taken to this court. (R., p. 41).

The questions to be considered by the court are, first, whether an order made in aid of the execution of the decree of this court can be reviewed here, and second, if it can, whether the court below erred in that order.

Before proceeding to discuss these questions, it may be well to observe that the original proceeding in this cause was not instituted for the purpose of subjecting the *equitable* interest of Brooke Mackall in the property in question to sale, for the payment of his judgment creditors. The bill filed avers and charges (R., p. 4), that the said property was sold to Brooke Mackall, Sr., *who sold and conveyed it* to Brooke Mackall, Jr., both of which conveyances were suppressed and kept from the Land Records of the County of Washington in the District of Columbia, for the purpose of hindering and defrauding creditors, that Brooke Mackall, Jr., afterwards obtained a deed in confirmation of a tax sale made to him by the public authorities, which he likewise suppressed and kept from the Land Records for the same purpose (R., p. 5), and prays for discovery of these deeds and a sale of the property. Under the issue joined in this proceeding evidence was adduced which satisfied the court; that a conveyance had been made to Brooke Mackall, Jr. that he had exhibited it and obtained credit upon the faith of it; that he had filed the tax deed with the officers of the United States Government in support of a claim for the rent of the property in question, as his own, and had been paid large sums of money upon the faith of such proof, and upon these allegations and this proof, the court passed the decree (R., p. 10), finding and adjudging that the title to said property was in Brooke Mackall, Jr., and should be sold, which decree was affirmed in this court. (R. 11.)

First. This being a second appeal, nothing is brought up for re-examination except the proceedings subsequent to the

mandate. The *Lady Pike*, 96 *U. S.*, 462. Nothing is before the court but what is subsequent to the mandate. *Himley* vs. *Rose*, 5 *Cr.*, 314; *Roberts* vs. *Cooper*, 20 *Howard*, 481; *Noonan* vs. *Bradley*, 12 *Wall.*, 129.

It becomes of the first importance then, the appeal being founded upon the allegation that the mandate of the court has not been properly executed, that the court may know just what is to be determined at this hearing to ascertain what, the proceedings, in the court below, subsequent to the mandate of this court, were. This court, by its decree (R. p. 10), directs that certain real property specified shall be sold for the purpose of paying judgments and other incumbrances mentioned in the proceedings. The property is described as all of a lot of ground not theretofore sold under execution. Some question arising upon the execution of the mandate issued by this court upon this decree, as to the description of the property to be sold, the court below referred the cause to a special auditor (R. p. 16) to ascertain its metes and bounds. This officer made report that "from the papers before him, he could come to no conclusion," and along with his report transmitted to the court the papers consisting of certain official records of the judgments and executions upon which the former sale had been made, and depositions taken before him in his investigation. (R. p. 16 to 41.) The court, upon consideration of the report and the papers and depositions accompanying it, determined what the correct boundaries of the ground to be sold were, and directed sale to be made in accordance with the terms and provisions of the decree and mandate of this court. (R. p. 40.)

There can be no question, that after a case has been heard and determined in this court, and its mandate sent to the court from whence the case came, the only duty of the court below is to carry the decree and mandate into execution. From the earliest days of the court this doctrine has been

asserted. *Skillern's Exor.*, vs. *May's Exor.*, 5 *Cr.*, 267; *ex parte Storey* 12, *Peters* 342; *ex parte Sibbald* vs. *The United States*, *ib.*, 492; *ex parte Dubuque and Pacific R. R.*, 7 *Wall.*, 73; *Noonan* vs. *Bradley*, *supra*; *The Lady Pike*, *supra*.

It will be observed that in this cause the decree below affirmed by the decree of this court was final in its character. The cause had been decided upon its merits, the decree of the court left nothing open for controversy, and the mandate required only the execution of its decree. In *ex parte* Storey (*supra*)—the court citing *Skillern's Executors* vs. *May's Executors*, (*supra*)—holds that after the mandate of this court has been filed in the court below, that court is bound to carry the decree into execution, notwithstanding it shall appear that the court below had no jurisdiction. By the mandate in this case (R. p. 11), the court below is commanded to take such steps, by way of execution and proceedings, as, according to right and justice, ought to be had, notwithstanding the appeal. There is no duty imposed, except the execution of the decree. In *Hemily* vs. *Rose* (*supra*), the court is directed by the terms of the decree, to make certain inquiries. These inquiries were made under a reference to an Auditor, and the report of the Auditor was brought up to this court on appeal. Nothing of the kind is found in the decree in this cause; it is a decree to sell certain ground, the property of the appellant, for the purpose of paying judgments and incumbrances. That is all; no ambiguity is to be found in the language of the mandate. The doubt arises in the case as to what is meant in the decree by the description "not theretofore sold by the Marshal." How is the mandate to be carried into effect? That is the question—and the court determined to send it to an auditor to solve this difficulty. Had the court not a right upon the coming in of the report of this auditor, with all the facts before it, to

determine that question itself? and can that determination, made in order to carry into effect the mandate of this court, be reviewed now, and on this appeal? Proceedings to carry into effect the mandate of this court, commanding the execution of a final decree, must either exceed the jurisdiction of the court, or be in fraud or derogation of the rights of the appellant, in order that they can be brought into this court for review.

It is difficult to imagine how the court could have proceeded more surely to solve the difficulty shown to exist in the execution of the decree, and to ascertain with more certainty what part of the lot in question had been sold before, than by sending the cause to a master. It is suggested in appellant's brief that an action of ejectment was the proper method to ascertain the metes and bounds of the part of the lot sold by the Marshal, and an affidavit was filed in the cause that at the time the order of reference was made such an action was pending in the court. (R., p. 15.) This action could not affect the intended purpose in any event, and even if it could have done so, would necessarily have been accompanied with much expense and delay. As it was, the action mentioned in the affidavit was decided against plaintiff, and so left the matter in question just where it was. But it is a sufficient answer to this to say, that the court did not think the action of ejectment the proper remedy, and, with full knowledge of the pendency of that action, made the order in question. That it had a right to determine the proper course to be pursued, there can be no doubt.

Second. An attempt was made by the trustees under the original decree (R., p. 10) affirmed by this court (see mandate, R., p. 11), to sell the property directed to be sold, and a sale was, in fact, made and reported to the court (R., p. 12). This sale was, upon exceptions (R., 15) set aside (R., 15). It

order sustaining these exceptions, the Justice holding the Equity Court directs "that before sale can be made of the said property, the amount to be sold must be definitely ascertained by some proper legal procedure." (R., p. 15.) It is contended that this language, "some proper legal procedure," means some proceeding in a court of law, and that the court, in referring the matter to a special auditor by an order passed on its equity side, exceeded its authority. In support of this contention, reference is made to the suit in ejectment pending when the order of reference to the Auditor was made. A complete answer to this last contention can be found in the fact that it was determined, not only in the court which tried the ejectment suit, but upon appeal by the Court in General Term, (*Mackall, Trustee*, vs. *Richards*, 1st Mackey, 444,) that the plaintiff had no title, and could not maintain the action. The order of reference, it will be observed, does not specify what "legal procedure" is to be resorted to, nor does it indicate by what parties such "legal procedure" is to be initiated; and it is difficult to discover just what such procedure is to be, and by whom it is to be conducted. An action of ejectment failed, and it can hardly be insisted that experiments in actions at law were to be continued until some action that could be sustained was discovered.

All of the parties in interest were before the court, and its jurisdiction over both the property and the parties was complete, and why it should send the parties to another tribunal to determine what it could so easily do itself, is not apparent. And if this order of the court means, by "legal procedure" some proceeding at law, by whom was such proceeding to be instituted, and what must be the nature of such proceeding? The trustees could not bring such an action, because the decree of this court had already clothed them with all the title and authority they could possibly acquire for the purposes of the decree, and the proceeding

could not be one in ejectment, because that action is possessory in its character, and the only person against whom it could be maintained would be some one a stranger to the decree, in possession of the property and claiming it as against the decree. The court had no such meaning when it made the order, and it is an insult to the intelligence of the Justice who signs it to attempt to maintain that it has any such meaning. The method to be pursued in ascertaining "the amount of property to be sold" was, by the order in question, left to the discretion of the court, and the contention that resort was to be had to proceedings on the law side of the court, or that the parties in interest were to be postponed to the result of some pending action at law, cannot be sustained.

There can be no fault found with the method pursued by the court in determining the question in controversy, by reason of the means used for that purpose. The office of auditor is created under an act of the Assembly of Maryland in force in the District of Columbia, the act of 1785, Ch., '72, Sec. 17, and it has been held in the courts of that State, *Townshend* vs. *Duncan*, 2 *Bland.*, 58; that the powers and duties of a master in chancery in England, so far as they were in any way subservient to the proper exercise of the jurisdiction of the Court of Equity, had devolved upon, and did in fact belong to the auditor of that court. There can be no question then that the auditor was the proper person to whom to send the controversy arising under the order of sale, and the action of the trustees thereunder. Nor does it make any difference in this respect that the reference was to a special auditor. If this be so, then it follows that the report of the special auditor when it came in was subject to the supervision of the court, and that such order could be made upon its consideration, as to the court seemed best and most proper in view of all of the rights and circumstances surrounding the case.

The auditor in this case failed to reach a conclusion, but reported to the court all the papers and proofs that had been submitted to him during his investigation, and there can be no question that it was in the power of the court itself to consider these papers and proofs, and decide the controversy once and for all. It cannot and will not be contended that there was any fraud either in the order or the proceeding under it, neither can it be contended that any right of the appellant has been invaded in this matter. He was a party to the proceeding out of which the order grew, and was fully within the jurisdiction of the court, he was present with counsel before the auditor at every step of that officer's investigation, and had every opportunity to protect his rights had he supposed them to be in danger.

Third. It would seem that the right in the court to adjust and determine the disputed boundary in this case, ought to be conceded under the general jurisdiction of Courts of Equity in such matters. Commissions to ascertain boundaries were issued by the Chancery Court in the very earliest days of its history, and it is well settled that bills in equity will lie to ascertain and fix boundaries, when it will prevent a multiplicity of suits. Story, Eq. Jurisprudence, Sec. 621, and note; and see Spence's Eq. Jur., Vol. 1, p. 655. So that the aid of a Court of Equity might have been invoked to settle these boundaries even had the proceeding been an original one, how much more, then, when that court, of its own motion, undertakes, in the execution of a decree of this court, to adjust the lines of the part of the lot of ground ordered to be sold. This being so, and conceding, for the sake of the argument, that the proceedings in question can be reviewed on this appeal, it is submitted that there is no error in the order of the court settling and determining what is, in fact, the southern line of the part of the lot sold by the Marshal to Richards.

It will be found, upon examining the deed of the Marshal to Alfred Richards, that it describes the lot sold as beginning at the northeast corner of New York Avenue and Fourteenth street, thence running south 44 feet, and thence westerly to the west line of said lot. This second line is the only portion of the description about which there is any difficulty, the other lines are not disputed. New York Avenue does not make a right angle with Fourteenth street, and a line run due west from the point on Fourteenth street, 44 feet south of the point of beginning, will reach that avenue in such a manner as not to enclose a parallelogram, but, on the contrary, a wedge-shaped piece of ground covered almost entirely by the building referred to; and a line so drawn cannot, by any possibility, reach the *west line* of the said lot.

It is contended by the appellant that this line, which is the southern line of the parcel of ground in question, should run west, and not in a line parallel to New York Avenue, as the decree below prescribes, thus giving to Richards, under the deed from the Marshal, a wedge-shaped lot instead of a parallelogram. But it will be seen that the *west line* of lot seven is called for as the terminal point of this second, or southern line, and that when that west line is reached by the southern line, the description proceeds, *with said west line*, in a northerly direction to New York Avenue. It is submitted that the west line of the lot 7, in such a description, becomes a known monument or boundary, and must govern the courses and distances. The doctrine in such cases, well established, is this:

> "The courses and distances given in a deed are regarded as more or less uncertain, and always give place, in questions of doubt or discrepancy, to known monuments and boundaries that are referred to in the deed as indicating and identifying the land."
>
> Washburn on Real Property, Vol. 2, p. 631, and note.
> Greenleaf's Cruise, Vol. IV., 265, and notes.

The rule is as well settled as any in the law, that where the boundaries of land are fixed, known and unquestionable monuments, although neither courses, nor distances, nor the computed contents correspond, the monuments must govern.

Davis vs. *Rainsford*, 17 Mass., 210;
Frost vs. *Spaulding*, 19 Pick., 446;
Carroll vs. *Norwood*, 5 Harr. & J., 163;
Hammond vs. *Ridgley*, Id., 255;
Pennington vs. *Bordley*, 4 Id., 458;
Thomas' Lessee vs. *Godfrey et al.*, 3 Gill & J., 149.

Monuments must control courses and distances even if it cause a wide departure from them.

Cobern vs. *Coxeter*, 51 N. H., 158.

Where a line is described as running in a *northerly* direction, it will be construed as running due north, *unless controlled by some known monument.*

Brandt vs. *Ogden*, 1 Johns., 157.

The line of a tract of land may as well be the subject of a call as a natural object.

Carroll vs. *Norwood*, *supra*, and
Pennington vs. *Bordley*, *supra*;
Breck vs. *Young*, 11 N. H., 489.

And in support of the general rule, as above, see

Newson vs. *Pryor*, 7 Wheat., 10;
Brown vs. *Huger*, 21 Howard, 318;
White vs. *Luning*, 3 Otto, 514, Syllabus.

Some effort is made to show that the front of this lot is on New York Avenue. Mr. Forsyth, the Surveyor, is the principle witness called to prove this. He says: "The

primary front of the lot is New York Avenue, *because the avenues are the leading streets—that this is the case in the whole city—does not know of a single instance to the contrary.*"

Upon cross-examination, his attention is called to several houses of prominent citizens at the intersections of streets and avenues, and he has to admit that they all front the streets, not the avenues. It will be found that this is almost universally the case. Mr. Emery, who furnished the stone, Mr. Morsell, the architect, Mr. Lee, who built, and Mr. Edmonston, who completed the house, all unite in placing the front on Fourteenth street. The fact is that the house fronts on both streets, but any business man will say that Fourteenth street is much the more valuable front of the two. This is immaterial any way to this controversy, but it is made of great importance by the appellant, and is accordingly noticed here. A plat of a subdivision is paraded upon the brief filed below and made part of the appellant's brief here. The making and filing of subdivisions in the city of Washington are regulated by law. See Rev. Stat. U. S., relating to the Dist. of Col., Secs. 477–478 and 479, and no plat can be of any avail unless the provisions of these sections are complied with. There is no such plat as that exhibited, and the attempt to give it validity by the testimony of Forsyth, the Surveyor, utterly fails. It is a mere sketch, and presents an impossible and most absurd division of the lot in question. Such a division would destroy the value of the property, and was never seriously intended.

Fourth. The appellant, in his brief, refers to another cause now depending in this court, and brought here on appeal from the Supreme Court of the District of Columbia, in which that court has decided that the sale made by the Marshal to Richards was invalid. What that case has

to do with this, does not appear. A sale was certainly made by the Marshal, and a deed given to Richards, under which he entered into possession, and has erected very valuable improvements, and the proceeding in this case now before this court, was instituted to ascertain what remained of the lot after carving out the part sold to Richards. Whatever faults that sale may have, it was certainly a sale, and must be considered as such in determining the question now before the court.

W. B. WEBB,
ENOCH TOTTEN,
Counsel for Appellee.